Author's foreword

In order to understand the first four books of this work, one must note that what I call *virtue* in a republic is love of the homeland, that is, love of equality.[a] It is not a moral virtue or a Christian virtue; it is *political* virtue, and this is the spring that makes republican government move, as *honor* is the spring that makes monarchy move. Therefore, I have called love of the homeland and of equality, *political virtue*. I have had new ideas; new words have had to be found or new meanings given to old ones. Those who have not understood this have made me say absurdities that would be outrageous in every country in the world, because in every country in the world morality is desired.

2. It should be observed that there is a very great difference between saying that a certain quality, modification of the soul, or virtue is not the spring that makes a government act and saying that it is not present in that government. If I were to say that a certain wheel, a certain gear, is not the spring that makes this watch move, would one conclude that it is not present in the watch? Far from excluding moral and Christian virtues, monarchy does not even exclude political virtue. In a word, honor is in the republic though political virtue is its spring; political virtue is in the monarchy though honor is its spring.

Finally, the good man discussed in Book 3, chapter 5, is not the Christian good man, but the political good man, who has the political virtue I have mentioned. He is the man who loves the laws of his

In the translators' notes, references such as 3.4 are to books and chapters in *The Spirit of the Laws*.

[a] The Foreword was first printed in the 1757 edition.

country and who acts from love of the laws of his country. I have put all these matters in a new light in the present edition by further specifying the ideas, and in most places where I have used the word *virtue*, I have written *political virtue*.

Preface

If, among the infinite number of things in this book, there is any that, contrary to my expectations[a] might give offense, at least there is none that has been put here with ill intent. By nature, I have not at all a censorious spirit. Plato thanked heaven that he was born in Socrates' time, and as for me, I am grateful that heaven had me born in the government in which I live and that it wanted me to obey those whom it had me love.

I ask a favor that I fear will not be granted; it is that one not judge by a moment's reading the work of twenty years, that one approve or condemn the book as a whole and not some few sentences. If one wants to seek the design of the author, one can find it only in the design of the work.

I began by examining men, and I believed that, amidst the infinite diversity of laws and mores, they were not led by their fancies alone.

I have set down the principles, and I have seen particular cases conform to them as if by themselves, the histories of all nations being but their consequences, and each particular law connecting with another law or dependent on a more general one.

When I turned to antiquity, I sought to capture its spirit in order not to consider as similar those cases with real differences or to overlook differences in those that appear similar.

I did not draw my principles from my prejudices but from the nature of things.

[a] In Montesquieu *espoir* usually implies the concreteness of "expect" more than the wishfulness of "hope," so we have translated it consistently as "expect" and "expectation" rather than "hope" in order to avoid interpreting the standing of the hope or expectation.

Many of the truths will make themselves felt here only when one sees the chain connecting them with others. The more one reflects on the details, the more one will feel the certainty of the principles. As for the details, I have not given them all, for who could say everything without being tedious?

The sallies[b] that seem to characterize present-day works will not be found here. As soon as matters are seen from a certain distance, such sallies vanish; they usually arise only because the mind attaches itself to a single point and forsakes all others.

I do not write to censure that which is established in any country whatsoever. Each nation will find here the reasons for its maxims, and the consequence will naturally be drawn from them that changes can be proposed only by those who are born fortunate enough to fathom by a stroke of genius the whole of a state's constitution.

It is not a matter of indifference that the people be enlightened. The prejudices of magistrates began as the prejudices of the nation. In a time of ignorance, one has no doubts even while doing the greatest evils; in an enlightened age, one trembles even while doing the greatest goods. One feels the old abuses and sees their correction, but one also sees the abuses of the correction itself. One lets an ill remain if one fears something worse; one lets a good remain if one is in doubt about a better. One looks at the parts only in order to judge the whole; one examines all the causes in order to see the results.

If I could make it so that everyone had new reasons for loving his duties, his prince, his homeland and his laws and that each could better feel his happiness in his own country, government, and position, I would consider myself the happiest of mortals.

If I could make it so that those who command increased their knowledge of what they should prescribe and that those who obey found a new pleasure in obeying, I would consider myself the happiest of mortals.

I would consider myself the happiest of mortals if I could make it so that men were able to cure themselves of their prejudices. Here I call prejudices not what makes one unaware of certain things but what makes one unaware of oneself.

By seeking to instruct men one can practice the general virtue that includes love of all. Man, that flexible being who adapts himself in

[b] *traits saillants*. These *traits* are prominent features, as in architecture, not witticisms.

society to the thoughts and impressions of others, is equally capable of knowing his own nature when it is shown to him, and of losing even the feeling of it when it is concealed from him.

Many times I began this work and many times abandoned it; a thousand times I cast to the winds the pages I had written;[1] every day I felt my paternal hands drop;[2] I followed my object without forming a design; I knew neither rules nor exceptions; I found the truth only to lose it. But when I discovered my principles, all that I had sought came to me, and in the course of twenty years, I saw my work begin, grow, move ahead, and end.

If this work meets with success, I shall owe much of it to the majesty of my subject; still, I do not believe that I have totally lacked genius. When I have seen what so many great men in France, England, and Germany have written before me, I have been filled with wonder, but I have not lost courage. "And I too am a painter,"[3] have I said with Correggio.

[1] "A sport to the winds" [L.] [Vergil, *Aeneid* 6.75].
[2] "Twice the paternal hand had fallen" [L.] [Vergil, *Aeneid* 6.33].
[3] "And I too am a painter" [I.]. [An apocryphal remark attributed to Correggio on seeing, in 1515, Raphael's *St. Cecilia*; the story was first published by Sebastiano Resta, a seventeenth-century Italian writer on art.]

BOOK 1
On laws in general

CHAPTER I
On laws in their relation with the various beings

Laws, taken in the broadest meaning, are the necessary relations deriving from the nature of things; and in this sense, all beings have their laws: the divinity[1] has its laws, the material world has its laws, the intelligences superior to man have their laws, the beasts have their laws, man has his laws.

Those who have said that *a blind fate has produced all the effects that we see in the world* have said a great absurdity; for what greater absurdity is there than a blind fate that could have produced intelligent beings?

There is, then, a primitive[a] reason; and laws are both the relations that exist between it and the different beings, and the relations of these various beings to each other.

God is related to the universe, as creator and preserver; the laws according to which he created are those according to which he preserves; he acts according to these rules because he knows them; he knows them because he made them; he made them because they are related to his wisdom[b] and his power.

As we see that the world, formed by the motion of matter and devoid of intelligence, still continues to exist, its motions must have invariable laws; and, if one could imagine another world than this, it would have consistent[c] rules or it would be destroyed.

[1] "The law," Plutarch says in [*Moralia*] *Ad principem ineruditum* [780c], "is the queen of all, mortal and immortal." [Plutarch is quoting Pindar, fragment 169 (151).]

[a] We have rendered Montesquieu's *primitive* as "primitive," thus retaining the distinction between that term and *premier*, "first," which is used repeatedly in 1.2.

[b] We have translated *sage* and its various forms with "wise" and its various forms. The meaning is generally prudence, calm, sobriety.

[c] Montesquieu uses *constant, constamment*, and *constance* to refer both to a fixed rule and

Thus creation, which appears to be an arbitrary act, presupposes rules as invariable as the fate claimed by atheists. It would be absurd to say that the creator, without these rules, could govern the world, since the world would not continue to exist without them.

These rules are a consistently established relation. Between one moving body and another moving body, it is in accord with relations of mass and velocity that all motions are received, increased, diminished, or lost; every diversity is *uniformity*, every change is *consistency*.[d]

Particular intelligent beings can have laws that they have made, but they also have some that they have not made. Before there were intelligent beings, they were possible; therefore, they had possible relations and consequently possible laws. Before laws were made, there were possible relations of justice.[e] To say that there is nothing just or unjust but what positive laws ordain or prohibit is to say that before a circle was drawn, all its radii were not equal.

Therefore, one must admit that there are relations of fairness[f] prior to the positive law that establishes them, so that, for example, assuming that there were societies of men, it would be just to conform to their laws; so that, if there were intelligent beings that had received some kindness from another being, they ought to be grateful for it;[g] so that, if one intelligent being had created another intelligent being, the created one ought to remain in its original dependency; so that one intelligent being who has done harm to another intelligent being deserves the same harm in return, and so forth.

But the intelligent world is far from being as well governed as the physical world. For, though the intelligent world also has laws that are invariable by their nature, unlike the physical world, it does not follow its laws consistently. The reason for this is that particular intelligent beings are limited by their nature and are consequently subject to error; furthermore, it is in their nature to act by themselves. Therefore, they

to multiple actions that conform to the rule. We have chosen to translate them by "consistent" and "consistency," which have both of these implications.

[d] Here translating *constance* as "consistency" conveys the meaning of changing according to a rule, as "constancy" with its static implication would not. See note [b], above.

[e] Here Montesquieu takes advantage of the range of meaning of the French *juste*, which includes both the notion of "correct" and that of "just." It leads him to the arithmetic notion of justice in the next paragraph.

[f] *Equité* is translated throughout as "fairness," because it implies a much wider sphere than the English term "equity" with its almost exclusively legal implications. Here Montesquieu's *équité* reminds the reader of the *égal*, "equal," at the end of the preceding sentence and of the arithmetic relation.

[g] *avoir de la reconnaissance*, See 31.33 (note [q], bk. 31).

do not consistently follow their primitive laws or even always follow the laws they give themselves.

It is not known whether beasts are governed by the general laws of motion or by a movement particular to themselves. Be that as it may, they do not have a more intimate relation with god[h] than the rest of the material world has, and feeling is useful to them only in their relation to one another, either with other particular beings, or with themselves.[i]

By the attraction of pleasure they preserve their particular being; by the same attraction they preserve their species. They have natural laws because they are united by feeling; they have no positive laws because they are not united by knowledge. Still, they do not invariably follow their natural laws; plants, in which we observe neither knowledge nor feeling, better follow their natural laws.

Beasts do not have the supreme advantages that we have; they have some that we do not have. They do not have our expectations,[j] but they do not have our fears; they suffer death as we do, but without recognizing it; most even preserve themselves better than we do and do not make such bad use of their passions.

Man, as a physical being, is governed by invariable laws like other bodies. As an intelligent being, he constantly violates the laws god has established and changes those he himself establishes; he must guide himself, and yet he is a limited being; he is subject to ignorance and error, as are all finite intelligences; he loses even the imperfect knowledge he has. As a feeling creature, he falls subject to a thousand passions. Such a being could at any moment forget his creator; god has called him back to him by the laws of religion. Such a being could at any moment forget himself; philosophers have reminded him of himself by the laws of morality. Made for living in society, he could forget his fellows; legislators have returned him to his duties by political and civil laws.

[h] Montesquieu never capitalizes *dieu*, "god."

[i] *dans le rapport qu'elles ont entre elles, ou avec d'autres êtres particuliers, ou avec elles-mêmes.* The middle term was added after 1748. This addition suggests that the meaning is that relations among animals may be either with members of other species or with other members of their own species.

[j] Whether men's having purposes beyond those of the animals leads to hopes or expectations is, of course, not clear from the French. (See note [a] in Preface.)

CHAPTER 2

On the laws of nature

Prior to all these laws are the laws of nature, so named because they derive uniquely from the constitution of our being. To know them well, one must consider a man before the establishment of societies. The laws he would receive in such a state will be the laws of nature.

The law that impresses on us the idea of a creator and thereby leads us toward him is the first of the *natural laws* in importance, though not first in the order of these laws. A man in the state of nature would have the faculty of knowing rather than knowledge. It is clear that his first ideas would not be speculative ones; he would think of the preservation of his being before seeking the origin of his being. Such a man would at first feel only his weakness; his timidity would be extreme: and as for evidence, if it is needed on this point, savages have been found in forests;[2] everything makes them tremble, everything makes them flee.

In this state, each feels himself inferior; he scarcely feels himself an equal. Such men would not seek to attack one another, and peace would be the first natural law.

Hobbes gives men first the desire to subjugate one another, but this is not reasonable. The idea of empire and domination is so complex and depends on so many other ideas, that it would not be the one they would first have.

Hobbes asks, *If men are not naturally in a state of war, why do they always carry arms and why do they have keys to lock their doors?*[k] But one feels that what can happen to men only after the establishment of societies, which induced them to find motives for attacking others and for defending themselves, is attributed to them before that establishment.

Man would add the feeling of his needs to the feeling of his weakness. Thus another natural law would be the one inspiring him to seek nourishment.

I have said that fear would lead men to flee one another, but the marks of mutual fear would soon persuade them to approach one

[2] Witness the savage who was found in the forests of Hanover and who lived in England in the reign of George I.

[k] See Thomas Hobbes, *Leviathan*, bk. 1, chap. 13.

another. They would also be so inclined by the pleasure one animal feels at the approach of an animal of its own kind. In addition, the charm that the two sexes inspire in each other by their difference would increase this pleasure, and the natural entreaty[l] they always make to one another would be a third law.

Besides feelings, which belong to men from the outset, they also succeed in gaining knowledge; thus they have a second bond, which other animals do not have. Therefore, they have another motive for uniting, and the desire to live in society is a fourth natural law.

[l] *prière.*

CHAPTER 3

On positive laws

As soon as men are in society, they lose their feeling of weakness; the equality that was among them ceases, and the state of war begins.

Each particular society comes to feel its strength, producing a state of war among nations. The individuals within each society begin to feel their strength; they seek to turn their favor the principal advantages of this society, which brings about a state of war among them.

These two sorts of states of war bring about the establishment of laws among men. Considered as inhabitants of a planet so large that different peoples are necessary, they have laws bearing on the relation that these peoples have with one another, and this is the RIGHT OF NATIONS.[m] Considered as living in a society that must be maintained, they have laws concerning the relation between those who govern and those who are governed, and this is the POLITICAL RIGHT.[n] Further, they have laws concerning the relation that all citizens have with one another, and this is the CIVIL RIGHT.

The *right of nations* is by nature founded on the principle that the various nations should do to one another in times of peace the most good possible, and in times of war the least ill possible, without harming their true interests.

[m] *le droit des gens* is translated "right of nations" throughout.

[n] We have translated *droit* as "right" and *loi* as "law." Although the French *droit* is usually closer to the meaning of "law" in English, we have kept Montesquieu's usage so that his distinction and his version of the changes in meaning would not be obscured.

The object of war is victory; of victory, conquest; of conquest, preservation. All the laws that form the *right of nations* should derive from this principle and the preceding one.

All nations have a right of nations; and even the Iroquois, who eat their prisoners, have one. They send and receive embassies; they know rights of war and peace: the trouble is that their right of nations is not founded on true principles.

In addition to the right of nations, which concerns all societies, there is a *political right* for each one. A society could not continue to exist without a government. "*The union of all individual strengths*," as Gravina aptly says, "forms what is called the POLITICAL STATE."[o]

The strength of the whole society may be put in the hands of *one alone* or in the hands of *many*.[p] Since nature has established paternal power, some have thought that government by one alone is most in conformity with nature. But the example of paternal power proves nothing. For, if the power of the father is related to government by one alone, then after the death of the father, the power of the brothers, or after the death of the brothers, the power of the first cousins, is related to government by many. Political power necessarily includes the union of many families.

It is better to say that the government most in conformity with nature is the one whose particular arrangement best relates to the disposition of the people for whom it is established.[q]

Individual strengths cannot be united unless all wills are united. *The union of these wills*, as Gravina again aptly says, *is what is called the* CIVIL STATE.[r]

Law in general is human reason insofar as it governs all the peoples of the earth; and the political and civil laws of each nation should be only the particular cases to which human reason is applied.

Laws should be so appropriate to the people for whom they are made that it is very unlikely that the laws of one nation can suit another.

Laws must relate to the nature and the principle of the government that is established or that one wants to establish, whether those laws form it as do political laws, or maintain it, as do civil laws.

[o] Giovanni Vincenzo Gravina, *Origine Romani juris* (1739), bk. 2, chap. 18, p. 160.

[p] The eighteenth-century meaning of *plusieurs* was "many." The opposition is between "one" and "many," as between monarchies or despotisms and republics in Book 2.

[q] *Il vaut mieux dire que le gouvernement le plus conforme à la nature est celui dont la disposition particulière se rapporte mieux à la disposition du peuple pour lequel il est établi.* No English word covers all the disparate topics Montesquieu joins with the word *disposition*.

[r] Giovanni Vincenzo Gravina, *Origine Romani juris* (1739), bk. 3, chap. 7, footnote, p. 311.

They should be related to the *physical aspect* of the country; to the climate, be it freezing, torrid, or temperate; to the properties of the terrain, its location and extent; to the way of life of the peoples, be they plowmen, hunters, or herdsmen; they should relate to the degree of liberty that the constitution can sustain, to the religion of the inhabitants, their inclinations, their wealth, their number, their commerce, their mores and their manners; finally, the laws are related to one another, to their origin, to the purpose of the legislator, and to the order of things on which they are established. They must be considered from all these points of view.

This is what I undertake to do in this work. I shall examine all these relations; together they form what is called THE SPIRIT OF THE LAWS.[s]

I have made no attempt to separate *political* from *civil* laws, for, as I do not treat laws but the spirit of the laws, and as this spirit consists in the various relations that laws may have with various things, I have had to follow the natural order of laws less than that of these relations and of these things.

I shall first examine the relations that laws have with the nature and the principle of each government, and, as this principle has a supreme influence on the laws, I shall apply myself to understanding it well; and if I can once establish it, the laws will be seen to flow from it as from their source. I shall then proceed to other relations that seem to be more particular.

[s] L'ESPRIT DES LOIX. Whenver possible, we translate *esprit* as "spirit," but "mind" and "wit" also appear.

BOOK 2

On laws deriving directly from the nature of the government

CHAPTER 1

On the nature of the three varieties of governments

There are three kinds of government: REPUBLICAN, MONARCHICAL, and DESPOTIC. To discover the nature of each, the idea of them held by the least educated of men is sufficient. I assume three definitions, or rather, three facts: one, *republican government is that in which the people as a body, or only a part of the people, have sovereign power; monarchical government is that in which one alone governs, but by fixed and established laws; whereas, in despotic government, one alone, without law and without rule, draws everything along by his will and his caprices.*

That is what I call the nature of each government. One must see what laws follow directly from this nature and are consequently the first fundamental laws.

CHAPTER 2

On republican government and on laws relative to democracy

In a republic when the people as a body have sovereign power, it is a *democracy*. When the sovereign power is in the hands of a part of the people, it is called an *aristocracy*.

In a democracy the people are, in certain respects, the monarch; in other respects, they are the subjects.

They can be the monarch only through their votes which are their wills. The sovereign's will is the sovereign himself. Therefore, the laws

establishing the right to vote are fundamental in this government. Indeed, it is as important in this case to regulate how, by whom, for whom, and on what issues votes should be cast, as it is in a monarchy to know the monarch and how he should govern.

Libanius[1] says that *in Athens a foreigner who mingled in the people's assembly was punished with death.* This is because such a man usurped the right of sovereignty.

It is essential to determine the number of citizens that should form assemblies; unless this is done it cannot be known if the people have spoken or only a part of the people. In Lacedaemonia, there had to be 10,000 citizens. In Rome, which started small and became great, Rome, made to endure all the vicissitudes of fortune, Rome, which sometimes had nearly all its citizens outside its walls and sometimes all Italy and a part of the world within them, the number was not determined;[2] this was one of the great causes of its ruin.

A people having sovereign power should do for itself all it can do well, and what it cannot do well, it must do through its ministers.

Ministers do not belong to the people unless the people name them; therefore it is a fundamental maxim of this government that the people should name their ministers, that is, their magistrates.

The people, like monarchs and even more than monarchs, need to be guided by a council or senate. But in order for the people to trust it, they must elect its members, either choosing the members themselves, as in Athens, or establishing some magistrate to elect them as was occasionally the practice in Rome.

The people are admirable for choosing those to whom they should entrust some part of their authority. They have only to base their decisions on things of which they cannot be unaware and on facts that are evident to the senses. They know very well that a man has often been to war, that he has had such and such successes; they are, then, quite capable of electing a general. They know that a judge is assiduous, that many people leave the tribunal[a] satisfied with him, and

[1] [Libanius] *Declamations* 17 [*Hyperides oratio* 18.5–6] and 18 [*Strategi apologia* 44.15].
[2] See [M.'s] *Considerations on the Causes of the Greatness of the Romans and their Decline*, chap. 9, Paris, 1755 [chap. 9, p. 92; 1965 Eng. edn.].

[a] For *tribunal* we use "tribunal," and for *cour*, "court"; by keeping this distinction, we make the history of the development of tribunals as separate from the court of some king or nobleman easier to follow.

that he has not been convicted of corruption; this is enough for them to elect a praetor.[b] They have been struck by the magnificence or wealth of a citizen; that is enough for them to be able to choose an aedile. All these things are facts that they learn better in a public square than a monarch does in his palace. But will the people know how to conduct the public business,[c] will they know the places, the occasions, the moments, and profit from them? No, they will not.

If one were to doubt the people's natural ability to perceive merit, one would have only to cast an eye over that continuous series of astonishing choices made by the Athenians and the Romans; this will doubtless not be ascribed to chance.

It is known that in Rome, though the people had given themselves the right to elevate plebeians to posts, they could not bring themselves to elect them; and in Athens, although, according to the law of Aristides, magistrates could be drawn from any class, Xenophon[3] says that it never happened that the common people turned to those classes that could threaten their well-being or glory.

Just as most citizens, who are competent enough to elect, are not competent enough to be elected, so the people, who are sufficiently capable to call others to account for their management, are not suited to manage by themselves.

Public business must proceed, and proceed at a pace that is neither too slow nor too fast. But the people always act too much or too little. Sometimes with a hundred thousand arms they upset everything; sometimes with a hundred thousand feet they move only like insects.

In the popular state, the people are divided into certain classes. Great legislators have distinguished themselves by the way they have made this division, and upon it the duration and prosperity of democracies have always depended.

Servius Tullius followed the spirit of aristocracy in the composition of his classes. In Livy[4] and Dionysius of Halicarnassus[5], we see how he

[3] [Xenophon, "The Old Oligarch," *The Constitution of Athens*] pp. 691, 692, Wechelius edition of 1596 [1.3].
[4] [Livy] bk. 1 [1.43].
[5] [Dion. Hal., *Ant. Rom.*] bk. 4, arts. 15ff. [4.15–21].

[b] See 11.14 (p. 173) for Montesquieu's explanation of the Roman magistracies.
[c] Montesquieu uses *affaire* to refer to law-suits, translated "suits"; to issues before legislative bodies or sovereigns, translated "public business"; and to commercial transactions, translated "business."

put the right to vote into the hands of the principal citizens. He divided the people of Rome into one hundred and ninety-three centuries, forming six classes. He put the rich men, but in smaller numbers, into the first centuries; he put the less rich, but in larger numbers, into the following ones; he put the entire throng of the poor into the last century; and, since each century had only one voice,[6] it was means and wealth that had the vote rather than persons.

Solon divided the people of Athens into four classes. Guided by the spirit of democracy, he made these classes in order to specify not those who were to elect but those who could be elected; and leaving to the citizens the right to elect, he wanted them[7] to be able to elect judges from each of those four classes but magistrates from the first three only, where the well-to-do citizens were found.

Just as the division of those having the right to vote is a fundamental law in the republic, the way of casting the vote is another fundamental law.

Voting by *lot* is in the nature of democracy; voting by *choice* is in the nature of aristocracy.

The casting of lots is a way of electing that distresses no one; it leaves to each citizen a reasonable expectation of serving his country.

But as it is imperfect by itself, the great legislators have outdone each other in regulating and correcting it.

In Athens, Solon established that all military posts would be filled by choice but that senators and judges would be elected by lot.

He wanted the civil magistrates that required great expenditures to be given by choice and the others to be given by lot.

But in order to correct the vote by lot, he ruled that one could elect only from the number of those who presented themselves, that he who had been elected would be examined by judges,[8] and that each judge could accuse him of being unworthy;[9] this derived from both lot and

[6] See [M.'s] *Considerations on the Causes of the Greatness of the Romans and Their Decline*, chap. 9, for how the spirit of Servius Tullius was preserved in the republic [chap. 8, pp. 86–87; 1965 Eng. edn.].
[7] Dion. Hal. [*De antiquis oratoribus*], "Isocrates," vol. 2, p. 97, Wechelius edition [Isocrates 8]. [Julius] Pollux [*Onomasticon*], bk. 8, chap. 10, art. 130 [8.10.130. Pollux does not mention election, only class divisions in accord with property evaluations and the tax to be paid. See below, bk. 13, n. 4].
[8] See Demosthenes, *Orationes*, *De falsa legatione* [19.1–8] and *Against Timocrates* [24.21–22].
[9] Two tickets were even drawn for each place, one assigning the place and the other naming the person who was to succeed to it in case the first was rejected.

choice. On completing his term, the magistrate had to go through a second judgment regarding the way in which he had conducted himself. People without ability must have been very reluctant to offer their names to be drawn by lot.

The law that determines the way ballots are cast is another fundamental law in democracy. Whether the votes should be public or secret is a great question. Cicero[10] writes that the laws[11] that made them secret in the late period of the Roman republic were one of the major causes of its fall. Given that this practice varies in different republics, here, I believe, is what must be thought about it.

When the people cast votes, their votes should no doubt be public;[12] and this should be regarded as a fundamental law of democracy. The lesser people must be enlightened by the principal people and subdued by the gravity of certain eminent men. Thus in the Roman republic all was destroyed by making the votes secret; it was no longer possible to enlighten a populace on its way to ruin. But votes cannot be too secret in an aristocracy when the body of nobles casts the votes,[13] or in a democracy when the senate does so,[14] for here the only issue is to guard against intrigues.

Intrigue is dangerous in a senate; it is dangerous in a body of nobles; it is not dangerous in the people, whose nature is to act from passion. In states where the people have no part in the government, they become as inflamed for an actor as they would for public affairs. The misfortune of a republic is to be without intrigues, and this happens when the people have been corrupted by silver; they become cool, they grow fond of silver, and they are no longer fond of public affairs; without concern for the government or for what is proposed there, they quietly await their payments.

Yet another fundamental law in democracy is that the people alone should make laws. However, there are a thousand occasions when it is necessary for the senate to be able to enact laws; it is often even

[10] [Cicero] *De legibus*, bks. 1 and 3 [e.g., 3.15.33–3.17.40].

[11] They were called ballotting laws. Each citizen was given two ballots, the first marked with an A, for *Antiquo* [to reject or to leave something in its former condition]; the other with U and R, for *uti rogas* [to ask for an opinion or vote]. [Refers to Cicero, *De legibus* 3.34.37.]

[12] In Athens, hands were raised.

[13] As in Venice.

[14] The thirty tyrants of Athens wanted the votes of the Areopagus to be public in order to direct them according to their fancy. Lysias, *Orationes*, *Against Agoratus*, chap. 8 [13.37].

appropriate to test a law before establishing it. The constitutions of Rome and Athens were very wise. The decrees of the senate[15] had the force of law for a year; they became permanent only by the will of the people.

[15] See Dion. Hal. [*Ant. Rom.*], bk. 4 [4.80.2 and 4.74.2] and bk. 9 [9.37.2].

CHAPTER 3

On laws relative to the nature of aristocracy

In aristocracy, sovereign power is in the hands of a certain number of persons. They make the laws and see to their execution, and the rest of the people mean at best no more to these persons than the subjects in a monarchy mean to the monarch.

Voting should not be by lot; this would have only drawbacks. Indeed, in a government that has already established the most grievous distinctions, though a man might be chosen by lot, he would be no less odious for it; the noble is envied, not the magistrate.

When there are many nobles, there must be a senate to rule on the affairs that the body of nobles cannot decide and to take the preliminary steps for those on which it decides. In the latter case, it may be said that aristocracy is, in a way, in the senate, that democracy is in the body of nobles, and that the people are nothing.

It is a very fine thing in an aristocracy for the people to be raised from their nothingness in some indirect way; thus, in Genoa, the Bank of St George, administered largely by the principal men among the people,[16] gives the people a certain influence in government, which brings about their whole prosperity.

Senators should not have the right to fill vacancies in the senate; nothing would be more likely to perpetuate abuses. In Rome, which was a kind of aristocracy in its early days, the senate did not name replacements; new senators were named by the censors.[17]

When an exorbitant authority is given suddenly to a citizen in a

[16] [Joseph] Addison, *Remarks on Several Parts of Italy in the Years 1701, 1702, 1703*, p. 16 [2, 24–25; 1914 edn.].

[17] At first they were named by the consuls.

republic, this forms[d] a monarchy or more than a monarchy. In monarchies, the laws have protected the constitution or have been adapted to it; the principle of the government checks the monarch; but in a republic when a citizen takes exorbitant power,[18] the abuse of this power is greater because the laws, which have not foreseen it, have done nothing to check it.

The exception to this rule occurs when the constitution of the state is such that it needs a magistracy with exorbitant power. Such was Rome with its dictators, such is Venice with its state inquisitors; these are terrible magistracies which violently return the state to liberty. But how does it happen that the magistracies are so different in these two republics? It is because, whereas Venice uses its state inquisitors to maintain its aristocracy against the nobles, Rome was defending the remnants of its aristocracy against the people. From this it followed that the dictator in Rome was installed for only a short time because the people act from impetuosity and not from design. His magistracy was exercised with brilliance, as the issue was to intimidate, not to punish, the people; the dictator was created for but a single affair and had unlimited authority with regard to that affair alone because he was always created for unforeseen cases. In Venice, however, there must be a permanent magistracy: here designs can be laid, followed, suspended, and taken up again; here too, the ambition of one alone becomes that of a family, and the ambition of one family, that of several. A hidden magistracy is needed because the crimes it punishes, always deep-seated, are formed in secrecy and silence. The inquisition of this magistracy has to be general because its aim is not to check known evils but to curb unknown ones. Finally, the Venetian magistracy is established to avenge the crimes it suspects, whereas the Roman magistracy used threats more than punishments, even for those crimes admitted by their instigators.

In every magistracy, the greatness of the power must be offset by the brevity of its duration. Most legislators have fixed the time at a year; a longer term would be dangerous, a shorter one would be contrary to the nature of the thing. Who would want thus to govern his domestic

[18] This is what caused the overthrow of the Roman republic. See the *Considerations on the Causes of the Greatness of the Romans and their Decline*, Paris, 1755 [chap. 11, pp. 107–108; 1965 Eng. edn.].

[d] Montesquieu often uses the verb *former* in the old sense of establishing by giving shape.

affairs? In Ragusa,[19] the head of the republic changes every month; the other officers, every week; the governor of the castle, every day. This can take place only in a small republic[20] surrounded by formidable powers which could easily corrupt petty magistrates.

The best aristocracy is one in which the part of the people having no share in the power is so small and so poor that the dominant part has no interest in oppressing it. Thus in Athens when Antipater[21] established that those with less than two thousand drachmas would be excluded from the right to vote, he formed the best possible aristocracy, because this census[e] was so low that it excluded only a few people and no one of any consequence in the city.

Therefore, aristocratic families should be of the people as far as possible. The more an aristocracy approaches democracy, the more perfect it will be, and to the degree it approaches monarchy the less perfect it will become.

Most imperfect of all is the aristocracy in which the part of the people that obeys is in civil slavery to the part that commands, as in the Polish aristocracy, where the peasants are slaves of the nobility.

[19] [Joseph Pitton] Tournefort, *Relation d'un voyage du Levant*. [Not in Tournefort; he did not write about Ragusa. A probable source is Louis Des Hayes Courmenin, *Voiage de Levant*, pp. 480, 484, 485; 1632 edn.].

[20] In Lucca, the magistrates are established for only two months.

[21] Diodorus Siculus [*Bibliotheca historica*], bk. 18, p. 601, Rhodoman edition [18.18.4].

[e] See 13.7 (p. 216) for a further discussion of the Athenian census.

CHAPTER 4

On laws in their relation to the nature of monarchical government[f]

Intermediate, subordinate, and dependent powers constitute the nature of monarchical government, that is, of the government in which one alone governs by fundamental laws. I have said intermediate, subordinate, and dependent powers; indeed, in a monarchy, the prince is the source of all political and civil power. These fundamental laws

[f] The awkwardness of some of the sentences and paragraphs in this chapter reflects the difficulties inherent in asserting, in the middle of the eighteenth century in France, that intermediate powers, however understood, were intrinsic to monarchy.

necessarily assume mediate channels through which power flows; for, if in the state there is only the momentary and capricious will of one alone, nothing can be fixed and consequently there is no fundamental law.

The most natural intermediate, subordinate power is that of the nobility. In a way, the nobility is of the essence of monarchy, whose fundamental maxim is: *no monarch, no nobility: no nobility, no monarch*; rather, one has a despot.

In a few European states, some people had imagined abolishing all the justices of the lords.[g] They did not see that they wanted to do what the Parliament of England did. If you abolish the prerogatives of the lords, clergy, nobility, and towns in a monarchy, you will soon have a popular state or else a despotic state.

For several centuries the tribunals of a great European state have been constantly striking down the patrimonial jurisdiction of the lords and the ecclesiastical jurisdiction. We do not want to censure such wise magistrates, but we leave it to be decided to what extent the constitution can be changed in this way.

I do not insist on the privileges of the ecclesiastics, but I would like their jurisdiction to be determined once and for all. It is a question of knowing not if one was right in establishing it but rather if it is established, if it is a part of the country's laws, and if it is relative to them throughout; if between two powers recognized as independent, conditions should not be reciprocal; and if it is not all the same to a good subject to defend the prince's justice or the limits that his justice has always prescribed for itself.

To the extent that the power of the clergy is dangerous in republics, it is suitable in monarchies, especially in those tending to despotism. Where would Spain and Portugal have been, after the loss of their laws, without the power that alone checks arbitrary power? Ever a good barrier when no other exists, because, as despotism causes appalling ills to human nature, the very ill that limits it is a good.

Just as the sea, which seems to want to cover the whole earth, is checked by the grasses and the smallest bits of gravel on the shore, so monarchs, whose power seems boundless, are checked by the slightest obstacles and submit their natural pride to supplication and prayer.

In order to favor liberty, the English have removed all the intermediate powers that formed their monarchy. They are quite right to preserve that liberty; if they were to lose it, they would be one of the most enslaved peoples on earth.

[g] In French *justice* denotes both the abstract notion and the institution which judges. See 30.20 and note [bb] for Montesquieu's account of the justices of the lords.

Mr. Law, equally ignorant of the republican and of the monarchical constitutions, was one of the greatest promoters of despotism that had until then been seen in Europe.[h] Besides the changes he made, which were so abrupt, so unusual, and so unheard of, he wanted to remove the intermediate ranks and abolish the political bodies;[i] he was dissolving[22] the monarchy by his chimerical repayments and seemed to want to buy back the constitution itself.

It is not enough to have intermediate ranks in a monarchy; there must also be a depository of laws.[j] This depository can only be in the political bodies, which announce the laws when they are made and recall them when they are forgotten. The ignorance natural to the nobility, its laxity, and its scorn for civil government require a body that constantly brings the laws out of the dust in which they would be buried. The prince's council is not a suitable depository. By its nature it is the depository of the momentary will of the prince who executes, and not the depository of the fundamental laws. Moreover, the monarch's council constantly changes; it is not permanent; it cannot be large; it does not sufficiently have the people's trust: therefore, it is not in a position to enlighten them in difficult times or to return them to obedience.

In despotic states, where there are no fundamental laws, neither is there a depository of laws. This is why religion has so much force in these countries; it forms a kind of permanent depository, and if it is not religion, it is customs that are venerated in the place of laws.

[22] Ferdinand, King of Aragon, made himself Grand Master of the Orders, and that alone spoiled the constitution.

[h] John Law (1671–1729). See 22.10 and note [e] for Montesquieu's account of Law's System.

[i] *corps politiques*, "political bodies," refers to political entities, including the *parlements*.

[j] The laws were in effect kept, held, by an entity whose responsibility was both to preserve and to use and interpret them. In English we retain something of this meaning in the term "deposition," or sworn evidence taken outside the court for later submission to the court. See 28.45 and note [v] for Montesquieu's explanation of the depository of the laws.

CHAPTER 5

On laws relative to the nature of the despotic state

A result of the nature of despotic power is that the one man who exercises it has it likewise exercised by another. A man whose five senses constantly tell him that he is everything and that others are nothing is naturally lazy, ignorant, and voluptuous. Therefore, he abandons the public business. But, if he entrusted this business to many people, there would be disputes among them; there would be intrigues to be the first slave; the prince would be obliged to return to administration. Therefore it is simpler for him to abandon them to a vizir[23] who will instantly have the same power as he. In this state, the establishment of a vizir is a fundamental law.

It is said that a certain pope, upon his election, overcome with his inadequacy, at first made infinite difficulties. Finally, he agreed to turn all matters of business over to his nephew. He was awestruck and said, "I would never have believed that it could be so easy." It is the same for the princes of the East. When, from that prison where eunuchs have weakened their hearts and spirits and have often left them ignorant even of their estate, these princes are withdrawn to be put on the throne, they are stunned at first; but when they have appointed a vizir, when in their seraglio they have given themselves up to the most brutal passions, when in the midst of a downtrodden court they have followed their most foolish caprices, they would never have believed that it could be so easy.

The more extensive the empire, the larger the seraglio, and the more, consequently, the prince is drunk with pleasures. Thus, in these states, the more peoples the prince has to govern, the less he thinks about government; the greater the matters of business, the less deliberation they are given.

[23] Eastern kings always have vizirs, says [John] Chardin [*Voyages*, "Description du gouvernement"; chap. 5, "Des charges"; 5, 339–340; 1811 edn.].

BOOK 3

On the principles of the three governments

CHAPTER 1

The difference between the nature of the government and its principle

After having examined the laws relative to the nature of each government, one must look at those that are relative to its principle.

There is this difference[1] between the nature of the government and its principle: its nature is that which makes it what it is, and its principle, that which makes it act. The one is its particular structure, and the other is the human passions that set it in motion.

Now, the laws should be no less relative to the principle of each government than to its nature. Therefore, this principle must be sought. I shall do so in this book.

[1] This difference is very important, and I shall draw many consequences from it; it is the key to an infinity of laws.

CHAPTER 2

On the principle of the various governments

I have said that the nature of republican government is that the people as a body, or certain families, have the sovereign power; the nature of monarchical government is that the prince has the sovereign power, but that he exercises it according to established laws; the nature of despotic government is that one alone governs according to his wills and caprices. Nothing more is needed for me to find their three principles; they derive naturally from this. I shall begin with republican government, and I shall first speak of the democratic government.

CHAPTER 3

On the principle of democracy

There need not be much integrity for a monarchical or despotic government to maintain or sustain itself. The force of the laws in the one and the prince's ever-raised arm in the other can rule or contain the whole. But in a popular state there must be an additional spring, which is VIRTUE.

What I say is confirmed by the entire body of history and is quite in conformity with the nature of things. For it is clear that less virtue is needed in a monarchy, where the one who sees to the execution of the laws judges himself above the laws, than in a popular government, where the one who sees to the execution of the laws feels that he is subject to them himself and that he will bear their weight.

It is also clear that the monarch who ceases to see to the execution of the laws, through bad counsel or negligence, may easily repair the damage; he has only to change his counsel or correct his own negligence. But in a popular government when the laws have ceased to be executed, as this can come only from the corruption of the republic, the state is already lost.

It was a fine spectacle in the last century to see the impotent attempts of the English to establish democracy among themselves. As those who took part in public affairs had no virtue at all, as their ambition was excited by the success of the most audacious one[2] and the spirit of one faction was repressed only by the spirit of another, the government was constantly changing; the people, stunned, sought democracy and found it nowhere. Finally, after much motion and many shocks and jolts, they had to come to rest on the very government that had been proscribed.

When Sulla wanted to return liberty to Rome, it could no longer be accepted; Rome had but a weak remnant of virtue, and as it had ever less, instead of reawakening after Caeser, Tiberius, Caius,[a] Claudius, Nero, and Domitian, it became ever more enslaved; all the blows were struck against tyrants, none against tyranny.

The political men of Greece who lived under popular government recognized no other force to sustain it than virtue. Those of today speak

[2] Cromwell.

to us only of manufacturing, commerce, finance,[b] wealth, and even luxury.

When that virtue ceases, ambition enters those hearts that can admit it, and avarice enters them all. Desires change their objects: that which one used to love, one loves no longer. One was free under the laws, one wants to be free against them. Each citizen is like a slave who has escaped from his master's house. What was a *maxim* is now called *severity*; what was a *rule* is now called *constraint*;[c] what was *vigilance* is now called *fear*. There, frugality, not the desire to possess, is avarice. Formerly the goods of individuals made up the public treasury; the public treasury has now become the patrimony of individuals. The republic is a cast-off husk, and its strength is no more than the power of a few citizens and the license of all.

There were the same forces in Athens when it dominated with so much glory and when it served with so much shame. It had 20,000 citizens[3] when it defended the Greeks against the Persians, when it disputed for empire with Lacedaemonia, and when it attacked Sicily. It had 20,000 when Demetrius of Phalereus enumerated them[4] as one counts slaves in a market. When Philip dared dominate in Greece, when he appeared at the gates of Athens,[5] Athens had as yet lost only time. In Demosthenes one may see how much trouble was required to reawaken it; Philip was feared as the enemy not of liberty but of pleasures.[6] This town, which had resisted in spite of so many defeats, which had been reborn after its destructions, was defeated at Chaeronea and was defeated forever. What does it matter that Philip returns all the prisoners? He does not return men. It was always as easy to triumph over the forces of Athens as it was difficult to triumph over its virtue.

How could Carthage have sustained itself? When Hannibal, as praetor, wanted to keep the magistrates from pillaging the republic, did

[3] Plutarch [*Vit.*], *Pericles* [37.4]; Plato, *Critias* [112d].

[4] There were 21,000 citizens, 10,000 resident aliens, and 400,000 slaves. See Athenaeus [Naucratia] [*Deipnosophistae*], bk. 6 [272c].

[5] It had 20,000 citizens. See Demosthenes, [*Orationes*] *Against Aristogeiton* [25.51].

[6] They had passed a law to punish by death anyone who might propose that the silver destined for the theatres be converted to the uses of war.

they not go and accuse him before the Romans? Unhappy men, who wanted to be citizens without a city and to owe their wealth to the hand of their destroyers! Soon Rome asked them to send three hundred of the principal citizens of Carthage as hostages; Rome made them surrender their arms and ships and then declared war on them. Given the things that a disarmed Carthage did from despair,[7] one may judge what it could have done with its virtue when it had its full force.

[7]This war lasted three years.

CHAPTER 4

On the principle of aristocracy

Just as there must be virtue in popular government, there must also be virtue in the aristocratic one. It is true that it is not as absolutely required.

The people, who are with respect to the nobles what the subjects are with respect to the monarch, are contained by the nobles' laws. Therefore, they need virtue less than the people of a democracy. But how will the nobles be contained? Those who should see to the execution of the laws against their fellows will instantly feel that they act against themselves. Virtue must, therefore, be in this body by the nature of the constitution.

Aristocratic government has a certain strength in itself that democracy does not have. In aristocratic government, the nobles form a body, which, by its prerogative and for its particular interest, represses the people; having laws is enough to insure that they will be executed.

But it is as easy for this body to repress the others as it is difficult for it to repress itself.[8] Such is the nature of this constitution that it seems to put under the power of the laws the same people it exempts from them.

Now such a body may repress itself in only two ways: either by a great virtue that makes the nobles in some way equal to their people, which may form a great republic; or by a lesser virtue, a certain moderation that renders the nobles at least equal among themselves, which brings about their preservation.

[8]Public crimes can be punished there because they are the business of all; private crimes will not be punished there, because it is not the business of all to punish them.

Therefore, *moderation* is the soul of these governments. I mean the moderation founded on virtue, not the one that comes from faintheartedness and from laziness of soul.

CHAPTER 5

That virtue is not the principle of monarchical government

In monarchies, politics accomplishes great things with as little virtue as it can, just as in the finest machines art employs as few motions, forces, and wheels as possible.

The state continues to exist independently of love of the homeland, desire for true glory, self-renunciation, sacrifice of one's dearest interests, and all those heroic virtues we find in the ancients and know only by hearsay.

The laws replace all these virtues, for which there is no need; the state excuses you from them: here an action done noiselessly is in a way inconsequential.

Though all crimes are by their nature public, truly public crimes are nevertheless distinguished from private crimes, so called because they offend an individual more than the whole society.

Now, in republics private crimes are more public, that is, they run counter to the constitution of the state more than against individuals; and, in monarchies, public crimes are more private, that is, they run counter to individual fortunes more than against the constitution of the state itself.

I beg that no one be offended by what I have said; I have followed all the histories. I know very well that virtuous princes are not rare, but I say that in a monarchy it is very difficult for the people to be virtuous.[9]

Read what the historians of all times have said about the courts of monarchs; recall the conversations of men from every country about the wretched character of courtiers: these are not matters of speculation but of sad experience.

Ambition in idleness, meanness in arrogance, the desire to enrich oneself without work, aversion to truth, flattery, treachery, perfidy, the

[9]I speak here about political virtue, which is moral virtue in the sense that it points toward the general good, very little about individual moral virtues, and not at all about that virtue which relates to revealed truths. This will be seen in book 5, chap. 2 [below].

abandonment of all one's engagements, the scorn of the duties of citizens, the fear of the prince's virtue, the expectation of his weaknesses, and more than all that, the perpetual ridicule cast upon virtue, these form, I believe, the character of the greater number of courtiers, as observed in all places and at all times. Now, it is very awkward for most of the principal men of a state to be dishonest people and for the inferiors to be good people, for the former to be deceivers and the latter to consent to be no more than dupes.

If there is some unfortunate honest man among the people,[10] hints Cardinal Richelieu in his *Political Testament*, a monarch should be careful not to employ him.[11] So true is it that virtue is not the spring of this government! Certainly, it is not excluded, but it is not its spring.

[10] To be understood in the sense of the preceding note.

[11] There it is said, "One must not employ people of low degree; they are too austere and too difficult" [Cardinal Richelieu, *Testament politique*, pt. 1, chap. 4, sec. 1; pp. 237–238; 1947 edn.].

CHAPTER 6

How virtue is replaced in monarchical government

I hasten and I lengthen my steps, so that none will believe I satirize monarchical government. No; if one spring is missing, monarchy has another. HONOR, that is, the prejudice of each person and each condition, takes the place of the political virtue of which I have spoken and represents it everywhere. It can inspire the finest actions; joined with the force of the laws, it can lead to the goal of government as does virtue itself.

Thus, in well-regulated monarchies everyone will be almost a good citizen, and one will rarely find someone who is a good man; for, in order to be a good man,[12] one must have the intention of being one[13] and love the state less for oneself than for itself.

[12] These words, *good man*, are to be taken here only in a political sense.

[13] See note 9.

CHAPTER 7

On the principle of monarchy

Monarchical government assumes, as we have said, preeminences, ranks, and even a hereditary nobility. The nature of *honor* is to demand preferences and distinctions; therefore, honor has, in and of itself, a place in this government.

Ambition is pernicious in a republic. It has good effects in monarchy; it gives life to that government; and it has this advantage, that it is not dangerous because it can constantly be repressed.

You could say that it is like the system of the universe, where there is a force constantly repelling all bodies from the center and a force of gravitation attracting them to it. Honor makes all the parts of the body politic move; its very action binds them, and each person works for the common good, believing he works for his individual interests.

Speaking philosophically, it is true that the honor that guides all the parts of the state is a false honor, but this false honor is as useful to the public as the true one would be to the individuals who could have it.

And is it not impressive that one can oblige men to do all the difficult actions and which require force, with no reward other than the renown of these actions?

CHAPTER 8

That honor is not the principle of despotic states

Honor is not the principle of despotic states: as the men in them are all equal, one cannot prefer oneself to others; as men in them are all slaves, one can prefer oneself to nothing.

Moreover, as honor has its laws and rules and is incapable of yielding, as it depends on its own caprice and not on that of another, honor can be found only in states whose constitution is fixed and whose laws are certain.

How could honor be endured by the *despot*? It glories in scorning life, and the despot is strong only because he can take life away. How could honor endure the despot? It has consistent rules and sustains its caprices; the despot has no rule, and his caprices destroy all the others.

Honor, unknown in despotic states where even the word to express it is often lacking,[14] reigns in monarchies; there it gives life to the whole body politic, to the laws, and even to the virtues.

[14]See [John] Perry [*The State of Russia under the Present Czar*], p. 447 [262] [p. 217; 1967 edn.].

CHAPTER 9

On the principle of despotic government

Just as there must be *virtue* in a republic and *honor* in a monarchy, there must be FEAR in a despotic government. Virtue is not at all necessary to it and honor would be dangerous.

The prince's immense power passes intact to those to whom he entrusts it. People capable of much self-esteem would be in a position to cause revolutions. Therefore, *fear* must beat down everyone's courage and extinguish even the slightest feeling of ambition.

A moderate government can, as much as it wants and without peril, relax its springs. It maintains itself by its laws and even by its force. But when in despotic government the prince ceases for a moment to raise his arm, when he cannot instantly destroy those in the highest places,[15] all is lost, for when the spring of the government, which is *fear*, no longer exists, the people no longer have a protector.

Apparently it was in this sense that the cadis claimed that the Grand Signior was not obliged to keep his word or his oath if by doing so he limited his authority.[16d]

The people must be judged by the laws, and the important men by the prince's fancy; the head of the lowest subject must be safe, and the pasha's head always exposed. One cannot speak of these monstrous governments without shuddering. The Sophi of Persia, deposed in our time by Myrrweis, saw his government perish before it was conquered because he had not spilled enough blood.[17]

[15]As often happens in military aristocracy.

[16][Paul] Rycaut, *The History of the Present State of the Ottoman Empire* [bk. 1, chap. 2; pp. 4–5; 1703 edn.].

[17]See Father [Jean Antoine] du Cerceau's [translation of Judasz Tadeusz Krusinski's] *Histoire de la dernière révolution de Perse* [1, 135–136; 1740 Eng. edn.].

History tells us that Domitian's horrible cruelties so frightened the governors that the people revived somewhat during his reign.[18] In the same way, a flood, destroying everything on one bank, leaves stretches of land on the other where meadows can be seen in the distance.

[18]His was a military government, which is one of the kinds of despotic government. [For example, Suetonius, *Vitae duodecim Caesarum*, *Domitian*, 10–14, 23.1; and Tacitus, *Agricola*.]

CHAPTER 10

The difference in obedience between moderate governments and despotic governments

In despotic states the nature of the government requires extreme obedience, and the prince's will, once known, should produce its effect as infallibly as does one ball thrown against another.

No tempering, modification, accommodation, terms, alternatives, negotiations, remonstrances, nothing as good or better can be proposed. Man is a creature that obeys a creature that wants.

He can no more express his fears about a future event than he can blame his lack of success on the caprice of fortune. There, men's portion, like beasts', is instinct, obedience, and chastisement.

It is useless to counter with natural feelings, respect for a father, tenderness for one's children and women, laws of honor, or the state of one's health; one has received the order and that is enough.

In Persia, when the king has condemned someone, no one may speak to him further about it or ask for a pardon. If he were drunken or mad, the decree would have to be carried out just the same;[19] if it were not, he would be inconsistent, and the law cannot be inconsistent. This has always been their way of thinking: as the order given by Ahasuerus to exterminate the Jews could not be revoked, it was decided to give them permission to defend themselves.[e]

There is, however, one thing with which one can sometimes counter

[19]See [John] Chardin [*Voyages*, "Description du gouvernement," chap. 2, "De la nature du gouvernement"; 5, 229; 1811 edn.].

the prince's will:[20] that is religion. One will forsake one's father, even kill him, if the prince orders it, but one will not drink wine if the prince wants it and orders it. The laws of religion are part of a higher precept, because they apply to the prince as well as to the subjects. But it is not the same for natural right; the prince is not assumed to be a man.

In monarchical and moderate states, power is limited by that which is its spring; I mean honor, which reigns like a monarch over the prince and the people. One will not cite the laws of religion to a courtier: he would feel it was ridiculous; instead one will incessantly cite the laws of honor. This results in necessary modifications of obedience; honor is naturally subject to eccentricities, and obedience will follow them all.

Though the way of obeying is different in these two governments, the power is nevertheless the same. In whatever direction the monarch turns, he prevails by tipping the balance and he is obeyed. The whole difference is that, in the monarchy, the prince is enlightened and the ministers are infinitely more skillful and experienced in public affairs than they are in the despotic state.

[20] Ibid. [John Chardin, *Voyages*, "Description du gouvernement des Persans"; 5, 233–235; 1811 edn.].

CHAPTER II

Reflections on all this

Such are the principles of the three governments: this does not mean that in a certain republic one is virtuous, but that one ought to be; nor does this prove that in a certain monarchy, there is honor or that in a particular despotic state, there is fear, but that unless it is there, the government is imperfect.

BOOK 4

That the laws of education should be relative to the principles of the government

CHAPTER 1

On the laws of education

The *laws of education* are the first we receive. And as these prepare us to be citizens, each particular family should be governed according to the plan of the great family that includes them all.

If there is a principle for the people taken generally, then the parts which compose it, that is, the families, will have one also. Therefore, the laws of education will be different in each kind of government. In monarchies, their object will be *honor*; in republics, *virtue*; in despotisms, *fear*.

CHAPTER 2

On education in monarchies

In monarchies the principal education is not in the public institutions where children are instructed; in a way, education begins when one enters the world. The world is the school of what is called *honor*, the universal master that should everywhere guide us.

Here, one sees and always hears three things: that *a certain nobility must be put in the virtues, a certain frankness in the mores, and a certain politeness in the manners*.

The virtues we are shown here are always less what one owes others than what one owes oneself; they are not so much what calls us to our fellow citizens as what distinguishes us from them.

One judges men's actions here not as good but as fine, not as just but as great; not as reasonable but as extraordinary.

As soon as honor can find something noble here, honor becomes either a judge who makes it legitimate or a sophist who justifies it.[a]

It allows gallantry when gallantry is united with the idea of an attachment of the heart or the idea of conquest; and this is the true reason mores are never as pure in monarchies as in republican governments.

It allows deceit when deceit is added to the idea of greatness of spirit or greatness of business, as in politics, whose niceties do not offend it.

It forbids adulation only when adulation is separated from the idea of a great fortune and is joined only with the feeling of one's own meanness.

I have said that, in monarchies, education should bring a certain frankness to the mores. Therefore, truth is desired in speech. But is this for the love of truth? Not at all. It is desired because a man accustomed to speaking the truth appears to be daring and free. Indeed, such a man seems dependent only on things and not on the way another receives them.

This is why, commending this kind of frankness here, one scorns that of the people, which has for its aim only truth and simplicity.

Finally, education in monarchies requires a certain politeness in manners. Men, born to live together, are also born to please each other; and he who does not observe the proprieties offends all those with whom he lives and discredits himself so much that he becomes unable to do any good thing.

But politeness does not customarily have its origin in such a pure source. It arises from the desire to distinguish oneself. We are polite from arrogance; we flatter ourselves that our manners prove that we are not common and that we have not lived with the sort of people who have been neglected through the ages.

In monarchies, politeness is naturalized at court. One excessively great man makes all others small. Hence the regard owed to everyone else and the politeness that flatters as much those who are polite as those to whom they are polite, because that politeness makes it understood that one belongs to the court or that one is worthy of belonging to it.

The courtly air consists in putting away one's own greatness for a borrowed greatness. This greatness is more flattering to a courtier than is his own. It gives a certain haughty modesty that spreads afar but whose arrogance diminishes imperceptibly in proportion to its distance from the source of greatness.

At court one finds a delicacy of taste in all things, which comes from continual use of the excesses of a great fortune, from the variety, and especially the weariness, of pleasures, from the multiplicity, even the confusion, of fancies, which, when they are pleasing, are always accepted.

Education bears on all these things to make what is called the *honnête homme*,[b] who has all the qualities and all the virtues required in this government.

Honor, meddling in everything, enters into all the modes of thought and all the ways of feeling and even directs the principles.

This eccentric honor shapes the virtues into what it wants and as it wants: on its own, it puts rules on everything prescribed to us; according to its fancy, it extends or limits our duties, whether their source be religion, politics, or morality.

There is nothing in monarchy that laws, religion, and honor prescribe so much as obedience to the wills of the prince, but this honor dictates to us that the prince should never prescribe an action that dishonors us because it would make us incapable of serving him.

Crillon refused to assassinate the Duke of Guise, but he proposed to Henry III that he engage the duke in battle. After Saint Bartholomew's Day, when Charles IX had sent orders to all the governors to have the Huguenots massacred, the Viscount of Orte, who was in command at Bayonne, wrote to the king,[1] "Sire, I have found among the inhabitants and the warriors only good citizens, brave soldiers, and not one executioner; thus, they and I together beg Your Majesty to use our arms and our lives for things that can be done." This great and generous courage regarded a cowardly action as an impossible thing.

For the nobility, honor prescribes nothing more than serving the prince in war: indeed, this is the preeminent profession because its risks, successes, and even misfortunes lead to greatness. But honor

[1] See [Théodore Agrippa] d'Aubigné's *Histoire universale* [bk. 6, chap. 5; 3.364; 1985 edn.].

wants to be the arbiter in imposing this law; and if honor has been offended, it permits or requires one to withdraw to one's home.

It wants one to be able indifferently to aspire to posts or to refuse them; it regards this liberty as greater than fortune itself.

Honor, therefore, has its supreme rules, and education is obliged to conform to them.[2] The principal rules are that we are indeed allowed to give importance to our fortune but that we are sovereignly forbidden to give any to our life.

The second is that, when we have once been placed in a rank, we should do or suffer nothing that might show that we consider ourselves inferior to the rank itself.

The third is that, what honor forbids is more rigorously forbidden when the laws do not agree in proscribing it, and that what honor requires is more strongly required when the laws do not require it.

[2] These comments refer to what is and not to what should be; honor is a prejudice, which religion sometimes works to destroy and sometimes to regulate.

CHAPTER 3

On education in despotic government

Just as education in monarchies works only to elevate the heart, education in despotic states seeks only to bring it down. There, education must bring about servility. It will be a good, even for the commander, to have had such an education, since no one is a tyrant there without at the same time being a slave.

Extreme obedience assumes ignorance in the one who obeys; it assumes ignorance even in the one who commands; he does not have to deliberate, to doubt, or to reason; he has only to want.

In despotic states, each household is a separate empire. Therefore, education, which comes mainly from living with others, is quite limited there; it is reduced to putting fear in the heart and in teaching the spirit a few very simple religious principles. Knowledge will be dangerous, rivalry deadly; and, as for the virtues, Aristotle cannot believe that any are proper to slaves;[3] this would indeed limit education in this government.

[3] [Aristotle] *Pol.*, bk. 1 [1260a34–1260b8].

Therefore, education is, in a way, null there. One must take everything away in order to give something and begin by making a bad subject in order to make a good slave.

Well! Why would education be intent upon forming a good citizen to take part in the public unhappiness? If he loved the state, he would be tempted to relax the springs of the government; if he failed, he would be ruined; if he succeeded, he would run the risk of ruining himself, the prince, and the empire.

CHAPTER 4

The difference in the effect of education among the ancients and among ourselves

Most of the ancient peoples lived in governments that had virtue for their principle, and when that virtue was in full force, things were done in those governments that we no longer see and that astonish our small souls.

Their education had another advantage over ours; it was never contradicted. In the last year of his life, Epaminondas said, heard, saw, and did the same things as at the time that he was first instructed.

Today we receive three different or opposing educations: that of our fathers, that of our schoolmasters, and that of the world. What we are told by the last upsets all the ideas of the first two. This comes partly from the opposition there is for us between the ties of religion and those of the world, a thing unknown among the ancients.

CHAPTER 5

On education in republican government

It is in republican government that the full power of education is needed. Fear in despotic governments arises of itself from threats and chastisements; honor in monarchies is favored by the passions and favors them in turn; but political virtue is a renunciation of oneself, which is always a very painful thing.

One can define this virtue as love of the laws and the homeland. This love, requiring a continuous preference of the public interest over one's own, produces all the individual virtues; they are only that preference.

This love is singularly connected with democracies. In them alone, government is entrusted to each citizen. Now government is like all things in the world; in order to preserve it, one must love it.

One never hears it said that kings do not love monarchy or that despots hate despotism.

Therefore, in a republic, everything depends on establishing this love, and education should attend to inspiring it. But there is a sure way for children to have it; it is for the fathers themselves to have it.

One is ordinarily in charge of giving one's knowledge to one's children and even more in charge of giving them one's own passions.

If this does not happen, it is because what was done in the father's house is destroyed by impressions from the outside.

It is not young people who degenerate; they are ruined only when grown men have already been corrupted.

CHAPTER 6

On some Greek institutions

The ancient Greeks, persuaded that peoples who lived in a popular government must of necessity be brought up to be virtuous, made singular institutions to inspire virtue. When you see, in the *Life of Lycurgus*, the laws he gave the Lacedaemonians, you believe you are reading the history of the Sevarambes. The laws of Crete were the originals for the laws of Lacedaemonia, and Plato's laws were their correction.

I pray that one pay a little attention to the breadth of genius of those legislators who saw that by running counter to all received usages and by confusing all virtues, they would show their wisdom to the universe. Lycurgus, mixing larceny with the spirit of justice, the harshest slavery with extreme liberty, the most heinous feelings with the greatest moderation, gave stability to his town. He seemed to remove all its resources, arts, commerce, silver, walls: one had ambition there without the expectation of bettering oneself; one had natural feelings but was neither child, husband, nor father; modesty itself was removed

from chastity. In these ways, Sparta was led to greatness and glory, with such an infallibility in its institutions that nothing was gained by winning battles against it, until its police was taken away.[4c]

Crete and Laconia were governed by these laws. Lacedaemonia was the last to yield to the Macedonians, and Crete[5] was the last prey of the Romans. The Samnites had these same institutions and they provided the occasion for twenty-four triumphs for the Romans.[6]

We can see that which was extraordinary in the Greek institutions in the dregs and corruption of modern times.[7] A legislator, an *honnête homme*,[d] has formed a people in whom integrity seems as natural as bravery was among the Spartans. Mr. Penn is a true Lycurgus; and, though he has had peace for his object as Lycurgus had war, they are alike in the unique path on which they have set their people, in their ascendancy over free men, in the prejudices they have vanquished, and in the passions they have subdued.

Paraguay can furnish us with another example. Some have wanted to use it to level charges against the Society,[e] which considers the pleasure of commanding the only good in life, but governing men by making men happier will always be a fine thing.[8]

It is fortunate for the Society that it was the first to show in these countries the idea of religion joined with that of humanity. By repairing the pillages of the Spaniards, it has begun to heal one of the greatest wounds mankind has yet received.

The Society's exquisite feeling for all it calls honor and its zeal for a religion that humbles those who listen far more than those who preach have made it undertake great things, and it has been successful. It has

[4] Philopoemen forced the Lacedaemonians to give up their way of raising children, knowing that if he did not, the Lacedaemonians would always have great souls and lofty hearts. Plutarch [*Vit.*], *Philopoemen* [16.5]. See Livy, bk. 38 [38.34.9].

[5] Crete defended its laws and its liberty for three years. See books 98, 99, and 100 of Livy in the *Epitome* of Florus [1.42.1; 3.7.1]. [In Johann Freinsheim, *Supplementorum Livianorum* 97.14–15; 98.80–84; 99.47; 100.10.] It put up more resistance than the greatest kings.

[6] Florus [*Epitome rerum Romanorum*], bk. 1 [1.11.8–1.16.8].

[7] "Among the dregs of Romulus" [L.]. Cicero [*Epistolae ad Atticum* 2.1.8].

[8] The Indians of Paraguay do not depend on a particular lord; their tributes are but one-fifth, and they have firearms for protection.

brought dispersed peoples out of the woods; it has assured their sustenance; it has clothed them; and if, in so doing, it had done no more than increase industry among men, it would have accomplished much.

Those who want to make similar institutions will establish the community of goods of Plato's *Republic*, the respect he required for the gods, the separation from strangers in order to preserve the mores, and commerce done by the city,[f] not by the citizens; they will produce our arts without our luxury and our needs without our desires.

They will proscribe silver, whose effect is to fatten the fortune of men beyond the limits nature has set for it, to teach men to preserve vainly what has been amassed vainly, to multiply desires infinitely and to supplement nature, which has given us very limited means to excite our passions and to corrupt one another.

"The Epadamnians,[9] feeling that their communication with the barbarians corrupted their mores, elected a magistrate to do all their trading in the name of the city and for the city." In this way commerce does not corrupt the constitution, and the constitution does not deprive the society of the advantages of commerce.

[9] Plutarch [*Moralia*], *Quaestiones Graecae* [chap. 29, 297f–298a].

CHAPTER 7

In what case these singular institutions can be good

These sorts of institutions can be suitable in republics, because political virtue is their principle, but less care is needed to induce honor in monarchies or to inspire fear in despotic states.

Furthermore, they can have a place only in a small state,[10] where one can educate the general populace and raise a whole people like a family.

The laws of Minos, Lycurgus, and Plato assume that all citizens pay a singular attention to each other. This cannot be promised in the confusion, oversights, and extensive business of a numerous people.

As has been said, silver must be banished from these institutions.

[10] As were the Greek towns.

But in large societies, the number, the variety, the press and the importance of business, the ease of purchases, and the slowness of exchanges, all these require a common measure. In order to carry one's power everywhere or defend it everywhere, one must have that to which men everywhere have attached power.

CHAPTER 8

Explanation of a paradox of the ancients in relation to mores

Polybius, judicious Polybius, tells us that music was necessary to soften the mores of the Arcadians, who lived in a country where the weather is gloomy and cold, that the inhabitants of Kynaithes, who neglected music, surpassed all the other Greeks in cruelty and that never had so much crime been seen in a town.[g] Plato is not afraid to say that no change can be made in music which is not a change in the constitution of the state. Aristotle, who seems to have written his *Politics* only in order to oppose his feelings to Plato's, nevertheless agrees with him about the power of music over mores. Theophrastus,[h] Plutarch,[11] and Strabo,[12] all the ancients, have thought likewise. This is not an opinion proffered without reflection; it is one of the principles of their politics.[13] It is thus that they gave laws; it is thus that they wanted the cities to be governed.

I believe I can explain this. One must keep in mind that in the Greek towns, especially in those whose principal aim was war, all work and all professions that could lead to earning silver were regarded as unworthy of a free man. "Most arts," said Xenophon,[14] "corrupt the body of the one who practices them; they oblige one to sit in the shade or near the

[11] [Plutarch, *Vit.*], *Pelopidas* [19.1].
[12] [Strabo, *Geographica*] bk. 1 [1.2.3,8].
[13] Plato, *Laws*, bk. 4 [6.765e], says that the prefectships of music and gymnastics are the most important employments of the city; and in his *Republic*, bk. 3 [400b]: "Damon will tell you," he said, "what sounds are capable of giving rise to baseness of soul, to insolence, and to the contrary virtues."
[14] [Xenophon] bk. 5, *Oeconomicus* [4.2–3].

fire: one has no time for one's friends, no time for the republic." It was only when some democracies became corrupted that craftsmen managed to become citizens. Aristotle[15] teaches us this, and he holds that a good republic will never give them citizenship.[16i]

Agriculture, too, was a servile profession, and it was ordinarily some conquered people who followed it: the Helots farmed for the Lacedaemonians, the Perioikoi for the Cretans, the Penestai for the Thessalians, and other[17] slave peoples in other republics.

Finally, all common commerce[18] was disgraceful to the Greeks. A citizen would have had to provide services for a slave, a tenant, or a foreigner; this idea ran counter to the spirit of Greek liberty; thus Plato[19] in his *Laws* wants any citizen who engages in commerce to be punished.

In the Greek republics, one was, therefore, in a very awkward position. One did not want the citizens to work in commerce, agriculture, or the arts; nor did one want them to be idle.[20] They found an occupation in the exercises derived from gymnastics and those related to war.[21] The institutions gave them no others. One must regard the Greeks as a society of athletes and fighters. Now, these exercises, so

[15] [Aristotle] *Pol.*, bk. 3, chap. 4 [1277b1–3].

[16] "Diophantes," says Aristotle in *Pol.* [bk. 2], chap. 7 [1267b15–19], "formerly established in Athens that the artisans would be slaves of the public."

[17] Thus Plato and Aristotle want slaves to cultivate the land. [Plato] *Laws*, bk. 7 [806e]; [Aristotle] *Pol.*, bk. 7, chap. 10 [1330a25–26]. It is true that agriculture was not everywhere the work of slaves; on the contrary, as Aristotle says [*Pol.* 1318b9–10], the best republics were those in which it was undertaken by the citizens, but this happened only through the corruption of the ancient governments, which had become democratic, for in the earliest times, the towns of Greece lived as aristocracies.

[18] *Cauponatio* [shopkeeping or innkeeping].

[19] [Plato, *Laws*] bk. 2 [919d–920a].

[20] Aristotle, *Pol.*, bk. 10. [This refers to the "completion" of Aristotle's *Politics* prepared by the Florentine scholar Cyriacus Stroza (1504–1565). It was first published in 1563. Stroza prepared two books, 9 and 10, providing a Greek text and a Latin translation. His supplement later appeared in Casaubon's edition of Aristotle, and was published into the eighteenth century. A French translation, prepared in the late sixteenth century, was appended to Le Roy's translation of the *Politics*. Book 9 concerns the education and training of soldiers; book 10 describes the role of princes and of priests. Both book 9 and book 10 address the issues of gymnastics, agriculture, commerce, and the best life.]

[21] "Gymnastic art is to exercise the body; the trainer's art is for the activities of different sports contests" [L.]. Aristotle, *Pol.*, bk. 8, chap. 3 [1338b6–8].

appropriate for making people harsh and savage,[22j] needed to be tempered by others that might soften the mores. Music, which enters the spirit through the organs of the body, was quite suitable. It is a mean between the physical exercises that render men harsh and the speculative sciences that render them savage. One cannot say that music inspired virtue; it would be inconceivable; but music curbed the effect of the ferocity of the institution and gave the soul a part in education that it would not otherwise have had.

I assume among ourselves a society of people so enamored of hunting that they did nothing else; they would surely acquire a certain roughness. If these same people were also to develop a taste for music, one would soon find a difference in their manners and in their mores. In short, the exercises practiced by the Greeks aroused in them only one type of passion: roughness, anger, and cruelty. Music arouses them all and can make the soul feel softness, pity, tenderness, and sweet pleasure. Those who write on morality for us and so strongly proscribe the theaters make us feel sufficiently the power of music on our souls.

If one gave only drums and trumpet fanfares to the society I have mentioned, would not one fall shorter of one's goal than if one gave it a tender music? The ancients were right, therefore, when, under certain circumstances, they preferred one mode of music to another for the sake of mores.

But, one will say, why should music be preferred? Of all the pleasures of the senses, none corrupts the soul less. We blush to read in Plutarch[23] that the Thebans, in order to soften the mores of their young people, established by their laws a love that ought to be proscribed by all nations in the world.

[22] Aristotle says that the children of the Lacedaemonians, who began these exercises when very young, became too ferocious as a result. Aristotle, *Pol.*, bk. 8, chap. 4 [1338b12–14].

[23] [Plutarch, *Vit.*] *Pelopidas* [18–19.2].

BOOK 5

That the laws given by the legislator should be relative to the principle of the government

CHAPTER 1

The idea of this book

We have just seen that the laws of education should have a relation to the principle of each government. It is the same for the laws the legislator gives to the society as a whole. This relation between the laws and the principle tightens all the springs of the government, and the principle in turn receives a new force from the laws. Thus, in physical motion, an action is always followed by a reaction.

We shall examine this relation in each government, and we shall begin with the republican state, which has virtue for its principle.

CHAPTER 2

What virtue is in the political state

Virtue, in a republic, is a very simple thing: it is love of the republic; it is a feeling and not a result of knowledge; the lowest man in the state, like the first, can have this feeling. Once the people have good maxims, they adhere to them longer than do those who are called *honnêtes gens*.[a] Corruption seldom begins with the people; from their middling enlightenment they have often derived a stronger attachment to that which is established.

Love of the homeland leads to goodness in mores, and goodness in mores leads to love of the homeland. The less we can satisfy our

particular passions, the more we give ourselves up to passions for the general order. Why do monks so love their order? Their love comes from the same thing that makes their order intolerable to them. Their rule deprives them of everything upon which ordinary passions rest; what remains, therefore, is the passion for the very rule that afflicts them. The more austere it is, that is, the more it curtails their inclinations, the more force it gives to those that remain.

CHAPTER 3

What love of the republic is in a democracy

Love of the republic in a democracy is love of democracy; love of democracy is love of equality.

Love of democracy is also love of frugality. As each one there should have the same happiness and the same advantages, each should taste the same pleasures and form the same expectations; this is something that can be anticipated only from the common frugality.

Love of equality in a democracy limits ambition to the single desire, the single happiness, of rendering greater services to one's homeland than other citizens. Men cannot render it equal services, but they should equally render it services. At birth one contracts an immense debt to it that can never be repaid.

Thus distinctions in a democracy arise from the principle of equality, even when equality seems to be erased by successful services or superior talents.

Love of frugality limits the *desire to possess* to the mindfulness required by that which is necessary for one's family, and even by that which is superfluous for one's homeland. Wealth gives a power that a citizen cannot use for himself, for he would not be equal. It also procures delights that he should not enjoy, because these would likewise run counter to equality.

Thus by establishing frugality in domestic life, good democracies opened the gate to public expenditures, as happened in Athens and Rome. Magnificence and abundance had their source in frugality itself; and, just as religion requires unsullied hands so that one can make offerings to the gods, the laws wanted frugal mores so that one could give to one's homeland.

The good sense and happiness of individuals largely consists in their having middling talents and fortunes. If a republic whose laws have formed many middling people is composed of sober people, it will be governed soberly;[b] if it is composed of happy people, it will be very happy.

CHAPTER 4

How love of equality and frugality is inspired

Love of *equality* and love of *frugality* are strongly aroused by equality and frugality themselves, when one lives in a society in which both are established by the laws.

In monarchies and despotic states, no one aspires to equality; the idea of equality does not even occur; in these states everyone aims for superiority. The people of the lowest conditions desire to quit those conditions only in order to be masters of the others.

It is the same for frugality; in order to love it, one must practice it. Those who are corrupted by delights will not love the frugal life; and if this had been natural and ordinary, Alcibiades would not have been the wonder of the universe. Nor will those who envy or admire the luxury of others love frugality; people who have before their eyes only rich men, or poor men like themselves, detest their poverty without loving or knowing what puts an end to poverty.

Therefore, it is a very true maxim that if one is to love equality and frugality in a republic, these must have been established by the laws.

CHAPTER 5

How the laws establish equality in democracy

Some legislators of ancient times, like Lycurgus and Romulus, divided the lands equally. This could happen only at the founding of a new republic; or when the old one was so corrupt and spirits so disposed

that the poor believed themselves obliged to seek, and the rich obliged to suffer, such a remedy.

If the legislator who makes such a division does not give laws to maintain it, his is only a transitory constitution; inequality will enter at the point not protected by the laws, and the republic will be lost.

One must, therefore, regulate to this end dowries, gifts, inheritances, testaments, in sum, all the kinds of contracts. For if it were permitted to give one's goods to whomever one wanted and as one wanted, each individual will would disturb the disposition of the fundamental laws.[c]

In Athens, Solon[1] acted inconsistently with the old laws, which ordered that goods should remain in the family of the testator,[2] when he permitted one to leave one's goods to whomever one wanted by testament provided one had no children. He acted inconsistently with his own laws; for, by cancelling debts, he had sought equality.

The law that forbade one to have two inheritances was a good law for democracy.[3] It originated in the equal division of the lands and portions given to each citizen. The law did not want any one man to have several portions.

The law ordering the closest male relative to marry the female heir arose from a similar source. Among the Jews, this law was given after a similar division. Plato,[4] who founds his laws on this division, gives it also, and it was an Athenian law.

There was a certain law in Athens of which, so far as I know, no one has understood the spirit. Marriage was permitted to the step-sister on the father's side, but not to the step-sister on the mother's side.[5] This usage originated in republics, whose spirit was to avoid giving two portions of land and consequently two inheritances to one person. When a man married the step-sister on the father's side, he could

[1] Plutarch [*Vit.*] *Solon* [21.2].
[2] Ibid. [Plutarch, *Vit.*, *Solon* 21.2.]
[3] Philolaus of Corinth established in Athens that the number of portions of land and that of inheritances would always be the same. Aristotle, *Pol.*, bk. 2, chap. 12 [1274b4–5].
[4] [Plato] *Republic*, bk. 8. [See *Laws* 924e–925e.]
[5] Cornelius Nepos [*Liber de excellentibus ducibus exterrarum gentium*], "Preface" [4]; this usage belonged to earliest times. Thus Abraham says of Sarah [Genesis 20.12]: "She is my sister, daughter of my father and not of my mother." The same reasons had caused the same law to be established among different peoples.

receive only one inheritance, that of his father; but, when he married the step-sister on the mother's side, it could happen that the father of this sister, in the absence of male children, might leave her the inheritance, and that the brother, who had married her, might consequently receive two of them.

Let not what Philo says be proposed to me as an objection:[6] that, although in Athens one might marry a step-sister on the father's side and not on the mother's side, in Lacedaemonia one could marry a step-sister on the mother's side and not on the father's side. For I find in Strabo[7] that in Lacedaemonia when a step-sister married a brother, she had half the brother's portion for her dowry. It is clear that this second law was made to curb the bad consequences of the first. In order to prevent the goods of the step-sister's family from passing to the brother's, half the brother's goods were given to the step-sister as a dowry.

Seneca,[8] speaking of Silanus, who had married his step-sister, says that such permission had restricted application in Athens and was applied generally in Alexandria. In the government of one alone, the question of maintaining the division of goods hardly arose.

In order to maintain this division of lands in a democracy, it was a good law that wanted the father of several children to choose one to inherit his portion[9] and have his other children adopted by someone who had no children, so that the number of citizens might always be maintained equal to the number of shares.

Phaleas of Chalcedon[10] devised a way of rendering fortunes equal in a republic where they were not equal. He wanted the rich to give dowries to the poor and to receive none from them, and the poor to receive silver for their daughters and to give none. But I know of no republic that adopted such a rule. It places the citizens under such strikingly different conditions that they would hate the very equality that one sought to introduce. It is sometimes good for laws not to appear to go so directly toward the end they propose.

Although in a democracy real equality is the soul of the state, still this

[6] [Philo Judaeus] *De specialibus legibus* [III.22; chap. 4].
[7] [Strabo, *Geographica*] bk. 10 [10.4.20].
[8] "In Athens it [marriage] was permitted to a half [sister]; in Alexandria to a full [sister]" [L.]. Seneca, *De morte Claudii* [*Apokolokyntosis* (*The Pumpkinification of the Divine Claudius*) 9.2].
[9] Plato makes a similar law. Bk. 3 of the *Laws* [740b–c].
[10] Aristotle, *Pol.*, bk. 2, chap. 7 [1266a39–1266b5].

equality is so difficult to establish that an extreme precision in this regard would not always be suitable. It suffices to establish a census[11] that reduces differences or fixes them at a certain point; after which, it is the task of particular laws to equalize inequalities, so to speak, by the burdens they impose on the rich and the relief they afford to the poor. Only wealth of middling size can give or suffer these kinds of adjustments, because, for men of immoderate fortunes, all power and honor not accorded them is regarded as an affront.

Every inequality in a democracy should be drawn from the nature of democracy and from the very principle of equality. For example, it can be feared there that people who need steady work for their livelihood might become too impoverished by a magistracy, or that they might neglect its functions; that artisans might become arrogant; that too-numerous freed men might become more powerful than the original citizens. In these cases, equality among the citizens[12] in the democracy can be removed for the utility of the democracy. But it is only an apparent equality that is removed; for a man ruined by a magistracy would be in a worse condition than the other citizens; and this same man, who would be obliged to neglect its functions, would put the other citizens in a condition worse than his, and so forth.

[11] Solon made four classes: the first, those who had five hundred minas of income, whether in grain or in liquid products; the second, those who had three hundred and could keep a horse; the third, those who had only two hundred; the fourth, all those who lived by their hands. Plutarch [*Vit.*], *Solon* [18.1–2].
[12] Solon excludes from burdens all those in the fourth census [hundred]. [Plutarch, *Vit.*, *Solon* 18.2.]

CHAPTER 6

How laws should sustain frugality in democracy

It is not sufficient in a good democracy for the portions of land to be equal; they must be small, as among the Romans. Curius said to his soldiers,[13] "God forbid that a citizen should esteem as little that land which is sufficient to nourish a man."

As the equality of fortunes sustains frugality, frugality maintains the

[13] They asked for a larger portion of the conquered land. Plutarch, *Moralia*, *Regum et imperatorum apophthegmata* [194e].

equality of fortunes. These things, although different, are such that they cannot continue to exist without each other; each is the cause and the effect; if one of them is withdrawn from democracy, the other always follows.

Certainly, when democracy is founded on commerce, it may very well happen that individuals have great wealth, yet that the mores are not corrupted. This is because the spirit of commerce brings with it the spirit of frugality, economy, moderation, work, wisdom, tranquillity, order, and rule. Thus, as long as this spirit continues to exist, the wealth it produces has no bad effect. The ill comes when an excess of wealth destroys the spirit of commerce; one sees the sudden rise of the disorders of inequality which had not made themselves felt before.

In order for the spirit of commerce to be maintained, the principal citizens must engage in commerce themselves; this spirit must reign alone and not be crossed by another; all the laws must favor it; these same laws, whose provisions divide fortunes in proportion as commerce increases them, must make each poor citizen comfortable enough to be able to work as the others do and must bring each rich citizen to a middle level such that he needs to work in order to preserve or to acquire.

In a commercial republic, the law giving all children an equal portion in the inheritance of the fathers is very good. In this way, whatever fortune the father may have made, his children, always less rich than he, are led to flee luxury and work as he did. I speak only of commercial republics, because, for those that are not, the legislator has to make many other regulations.[14]

In Greece there were two sorts of republics. Some were military, like Lacedaemonia; others, commercial, like Athens. In the former, one wanted the citizen to be idle; in the latter, one sought to instill a love for work. Solon made idleness a crime and wanted each citizen to account for the way he earned his living. Indeed, in a good democracy where spending should be only for necessities, each person should have them, for from whom would he receive them?

[14] Women's dowries should be much restricted there.

CHAPTER 7

Other means of favoring the principle of democracy

An equal division of lands cannot be established in all democracies. There are circumstances in which such an arrangement would be impractical and dangerous and would even run counter to the constitution. One is not always obliged to take extreme courses. If one sees that this division, which should maintain the mores, is not suitable in a democracy, one must have recourse to other means.

If a fixed body is established that is in itself the rule in mores, a senate to which age, virtue, gravity and service give entrance, the senators, who are seen by the people as simulacra of gods, will inspire feelings that will reach into all families.

The senate must, above all, be attached to the old institutions and see that the people and the magistrates never deviate from these.

With regard to mores, much is to be gained by keeping the old customs. Since corrupt peoples rarely do great things and have established few societies, founded few towns, and given few laws; and since, on the contrary, those with simple and austere mores have made most establishments, recalling men to the old maxims usually returns them to virtue.

Furthermore, if there has been some revolution and one has given the state a new form, it could scarcely have been done without infinite pain and work, and rarely with idleness and corrupt mores. The very ones who made the revolution wanted it to be savored, and they could scarcely have succeeded in this without good laws. Therefore, the old institutions are usually correctives, and the new ones, abuses. In a government that lasts a long time, one descends to ills by imperceptible degrees, and one climbs back to the good only with an effort.

It has been asked whether the members of the senate of which we are speaking should be members for life or chosen for a set time. They should doubtless be chosen for life, as was done in Rome,[15] Lacedaemonia,[16] and even Athens. The senate in Athens, a body that

[15] There the magistracies were for one year and the senators for life.

[16] "Lycurgus," says Xenophon, *The Constitution of the Lacedaemonians* [10.1–2], "wanted the senators elected from among the old men so that they should not be neglected even at the end of their lives; and by establishing them as judges of the courage of the young people, he made the old age of the former more honorable than the strength of the latter."

changed every three months, must not be confused with the Areopagus, whose members were established for life, a permanent model, as it were.

Here is a general maxim: in a senate made to be the rule, and, so to speak, the depository of the mores, senators should be elected for life; in a senate made to plan public business, the senators can change.

The spirit, says Aristotle, ages like the body. This reflection is good only in regard to a single magistrate and cannot be applied to an assembly of senators.

Besides the Areopagus, Athens had guardians of the mores and guardians of the laws.[17] In Lacedaemonia all the old men were censors. In Rome, two of the magistrates were the censors. Just as the senate keeps watch over the people, the censors must keep their eyes on the people and the senate. They must reestablish all that has become corrupted in the republic, notice slackness, judge oversights, and correct mistakes just as the laws punish crimes.

The Roman law that wanted the accusation of adultery to be made public maintained the purity of mores remarkably well; it intimidated the women and also intimidated those who kept watch over them.

Nothing maintains mores better than the extreme subordination of the young to the elderly. Both are contained, the former by the respect they have for the elderly, the latter by the respect they have for themselves.

Nothing gives greater force to the laws than the extreme subordination of the citizens to the magistrates. "The great difference Lycurgus set up between Lacedaemonia and other cities," says Xenophon,[18] "consists above all in his having made the citizens obey the laws; they hasten when the magistrate calls them. But in Athens, a rich man would despair if one believed him dependent on the magistrate."

Paternal authority is also very useful for maintaining mores. We have already said that none of the forces in a republic is as repressive as those in other governments. The laws must, therefore, seek to supplement them; they do so by paternal authority.

In Rome fathers had the right of life and death over their own

[17] The Areopagus itself was subject to the censorship.

[18] [Xenophon] *The Constitution of the Lacedaemonians* [8.2]. [Athens is not explicitly mentioned in the original.]

children.[19] In Lacedaemonia each father had the right to correct the child of another.

In Rome paternal power was lost along with the republic. In monarchies, where there is no question of such pure mores, one wants each person to live under the power of magistrates.

The laws of Rome, which accustomed young people to dependency, delayed their coming of age. Perhaps we were wrong to take up this usage; this much constraint is not needed in a monarchy.

The same subordination in a republic could make it possible for the father to remain the master of his children's goods during his life, as was the rule in Rome. But this is not in the spirit of monarchy.

[19] One can see in Roman history with what advantage to the republic this power was used. I shall speak only of the time of the greatest corruption. Aulus Fulvius was on his way to find Catilina; his father called him back and put him to death. Sallust, *Catilina* [39.5]. Several other citizens did the same. Cass. Dio [*Historia Romana*], bk. 37 [37.36.4].

CHAPTER 8

How laws should relate to the principle of the government in aristocracy

In an aristocracy, if the people are virtuous, they will enjoy almost the same happiness as in popular government, and the state will become powerful. But, as it is rare to find much virtue where men's fortunes are so unequal, the laws must tend to give, as much as they can, a spirit of moderation, and they must seek to reestablish the equality necessarily taken away by the constitution of the state.

The spirit of moderation is what is called virtue in aristocracy; there it takes the place of the spirit of equality in the popular state.

If the pomp and splendor surrounding kings is a part of their power, modesty and simplicity of manners are the strength of nobles in an aristocracy.[20] When the nobles affect no distinction, when they blend

[20] In our time the Venetians, who in many respects behaved very wisely, decided in a dispute between a Venetian nobleman and a gentleman of the mainland over precedence in a church that, outside of Venice, a Venetian nobleman had no preeminence over another citizen.

with the people, dress like them, and share all their pleasures with them, the people forget their own weakness.

Each government has its nature and its principle. The aristocracy must, therefore, not assume the nature and principle of monarchy, which would happen if the nobles had any personal and particular prerogatives distinct from those of the body to which they belong: privileges should be for the senate, and simple respect for the senators.

There are two principal sources of disorders in aristocratic states: extreme inequality between those who govern and those who are governed, and a similar inequality between the different members of the governing body. Hatreds and jealousies that the laws should prevent or check result from these two inequalities.

The first inequality is found chiefly when the privileges of the principal men are considered honorable only because they bring shame to the people. Such was the law in Rome that prohibited patricians from marrying plebeians,[21] which had no other effect than to render the patricians, on the one hand, more haughty, and on the other, more odious. Witness the advantages the tribunes drew from this in their harangues.

This inequality will again be found if the conditions of citizens differ in relation to payments, which happens in four ways: when the nobles give themselves the privilege of not paying them; when they exempt themselves fraudulently;[22] when they recover them for themselves on the pretext of remunerations or stipends for the tasks they do; finally, when they make the people their tributaries and divide among themselves the imposts they levy upon them. This last case is rare; when it occurs, an aristocracy is the harshest of all governments.

While Rome leaned toward aristocracy, it avoided these defects very well. The magistrates never drew stipends from their magistracies. The principal men of the republic were assessed like all others; they were assessed even more; and sometimes they were the only ones assessed. Finally, far from dividing the revenues of the state among themselves, they distributed all that could be drawn from the public treasury, all the wealth that fortune sent them, to the people, to be pardoned for their honors.[23]

[21] The decemvirs include it in the last two Tables. See Dion. Hal. [*Ant. Rom.*], bk. 10 [10.60.5].

[22] As in some aristocracies of our time. Nothing so weakens the state.

[23] See in Strabo [*Geographica*], bk. 14 [14.2.5], how the Rhodians behaved in this respect.

It is a fundamental maxim that distributions made to the people have pernicious effects in democracy to the same extent that they have good effects in aristocratic government. The former cause the loss of the spirit of citizenship,[d] the latter lead back to it.

If the revenues are not distributed to them, the people must be shown that they are well administered; displaying them to the people is a way of letting the people enjoy them. The gold chain that was hung in Venice, the wealth carried in Rome during the triumphs, and the treasures kept in the temple of Saturn, all were truly the people's wealth.

In aristocracy it is essential above all that the nobles not levy taxes.[e] In Rome, the highest order of the state had nothing to do with levying taxes; the second was charged with it, and even that led to serious drawbacks. If the nobles were to levy taxes in an aristocracy, all private individuals would be taxed at the discretion of the men concerned with matters of public business; there would be no higher tribunal to correct them. The nobles appointed to relieve the abuses would prefer to enjoy the abuses. Nobles would be like princes of despotic states, who confiscate the goods of whomever they please.

Soon these profits would be regarded as a patrimony, which avarice would extend according to its fancy. Tax farming[f] would collapse; public revenues would be reduced to nothing. In this way some states, without having received an observable setback, fall into a weakness that surprises their neighbors and stuns the citizens themselves.

The laws must also prohibit nobles from engaging in commerce; merchants with such rank would set up all sorts of monopolies. Commerce is the profession of equal people, and the poorest despotic states are those whose prince is a merchant.

The laws of Venice[24] prohibit nobles from engaging in any commerce, for it could give them, even innocently, exorbitant wealth.

The laws should use the most effective means to make the nobles render justice to the people. If the laws have not established a tribune, they must themselves be the tribune.

[24] [Abraham Nicolas] Amelot de la Houssaye, *Histoire du gouvernement de Venise*, part III [*Loix du gouvernement de Venise*, II; p. 25; 1740 edn]. The Claudian law forbade senators to have any vessel at sea holding more than forty barrels. Livy, bk. 21 [21.63].

Every sort of refuge from the execution of the laws ruins aristocracy, and tyranny is very near.

The laws should always humble the arrogance of domination. There must be, for a time or forever, a magistrate to make the nobles tremble, like the ephors in Lacedaemonia and the state inquisitors in Venice, whose magistracies are subject to no formalities. This government needs violent springs: in Venice, a stone mouth[25] is open for every informer; you might say it is the mouth of tyranny.

These tyrannical magistracies in aristocracies are related to censorship in democracy, which is no less independent by its nature. Indeed, the censors should not be examined about the things they have done during their censorship; they must be trusted, never daunted. The Romans were remarkable; all the magistrates[26] except the censors could be required to explain their conduct.[27]

Two things are pernicious in aristocracy: the extreme poverty of the nobles and their exorbitant wealth. To curb their poverty, they must above all be obliged to pay their debts promptly. To moderate their wealth, provisions must be made that are wise and imperceptible, in contrast to confiscations, agrarian laws, or the abolition of debts, which produce infinite evils.

The laws should remove the right of primogeniture from the nobles[28] so that fortunes are always restored to equality by the continual division of inheritances.

There must be no substitutions, no redemptions by one of the lineage, no entailed property, and no adoptions.[g] The means invented to perpetuate the greatness of families in monarchical states cannot be used in aristocracy.[29]

When the laws have equalized families, it remains for them to

[25] Informers throw their notes into it.

[26] See Livy, bk. 49 [45.15.7–8]. One censor could not even be bothered by another; each made his notation without consulting his colleague; and when it was done otherwise, the censorship was, so to speak, overthrown.

[27] In Athens, the Logistae, who had all the magistrates give account of themselves, did not do the same themselves.

[28] It is established in this way in Venice. [Abraham Nicolas] Amelot de la Houssaye [*Histoire du gouvernement de Venise*], pp. 30–31 [*Lois du gouvernement de Venise*, XII; 32–34; 1740 edn].

[29] It seems that the purpose of some aristocracies is less to maintain the state than to maintain what they call their nobility.

maintain the union between families. Disagreements among nobles should be resolved promptly; failing this, disputes between persons become disputes between families. Arbiters can end proceedings or keep them from arising.

Finally, the laws must not favor the distinctions that vanity puts between families on the pretext that some are nobler or older; this should rank with the pettinesses of private individuals.

One has only to cast an eye at Lacedaemonia; one will see how the ephors were able to humble the weaknesses of the kings, those of the important men, and those of the people.

CHAPTER 9

How laws are relative to their principle in monarchy

Since honor is the principle of this government, the laws should relate to it.

In monarchy they must work to sustain that nobility for whom honor is, so to speak, both child and father.

They must render it hereditary, not in order to be the boundary dividing the power of the prince from the weakness of the people, but to be the bond between them.

Substitutions, which keep goods in families, will be very useful in this government, though they are not suitable in the others.

Redemption by one of the lineage will return to the noble families the lands that a prodigal relative has transferred.

Noble lands, like noble persons, will have privileges. One cannot separate the dignity of the monarch from that of the kingdom; one can scarcely separate the dignity of the noble from that of his fief.

All these prerogatives will be peculiar to the nobility and will not transfer to the people, unless one wants to run counter to the principle of the government, unless one wants to diminish the force of the nobility and the force of the people.

Substitutions hamper commerce; redemption by one of the lineage makes an infinite number of proceedings necessary; and all the lands that are sold in the kingdom are more or less without a landlord for at least a year. Prerogatives attached to fiefs give a very burdensome power to those who hold them. These are the peculiar drawbacks of a

nobility, which disappear in the face of the general utility it procures. But if these are extended to the people, one uselessly runs counter to all principles.

In monarchies, a man can be permitted to leave most of his goods to one of his children; this permission is good only there.

The laws must favor all the commerce[30] that the constitution of this government can allow, so that the subjects can, without being ruined, satisfy the ever-recurring needs of the prince and his court.

The laws must put a certain order in the manner of levying taxes so that the manner is not heavier than the burdens themselves.

The weight of burdens at first produces work; work, dejection; dejection, the spirit of laziness.

[30]The constitution permits commerce only to the people. See Law 3 in the *Code* [*Corpus Juris Civilis*, *Code* 4.63.3]; *de commerciis et mercatoribus*, which is full of good sense.

CHAPTER 10

On the promptness of execution in monarchy

Monarchical government has a great advantage over republican; as public business is led by one alone, execution is more prompt. But, since this promptness could degenerate into haste, here the laws will introduce a certain slowness. They should not only favor the nature of each constitution, but also remedy the abuses that can result from this same nature.

In monarchies Cardinal Richelieu[31] wants one to avoid the intricacies of corporations, which form difficulties at every point. Even if this man's heart was not filled with despotism, his head was.

The bodies that are the depository of the laws never obey better than when they drag their feet and bring into the prince's business the reflection that one can hardly expect from the absence of enlightenment in the court concerning the laws of the state and the haste of the prince's councils.[32]

What would have become of the finest monarchy in the world if the

[31][Cardinal Richelieu] *Testament politique* (pt. 1, chap. 4, sec. 2; 243–247; 1947 edn).

[32]"For the barbarians, to delay is servile; immediate execution is proper to a king" [L.]. Tacitus, *Annales*, bk. 5 [6.32].

magistrates, by their slowness, their complaints, and their prayers, had not checked the course of even the virtues of its kings, when these monarchs, consulting only their generous souls, wanted to reward boundlessly services that were rendered with a similarly boundless courage and fidelity?

CHAPTER 11

On the excellence of monarchical government

Monarchical government has a great advantage over despotic. As it is in its nature to have under the prince several orders dependent on the constitution, the state is more fixed, the constitution more unshakable, and the persons of those who govern more assured.

Cicero[33] believes that the establishment of tribunes in Rome saved the republic. "Indeed," he says, "the force of the people without a leader is more terrible. A leader feels that the business turns on him, he thinks about it; but the people in their impetuosity do not know the peril into which they throw themselves." One can apply this reflection to a despotic state, where the people have no tribunes, and to a monarchy, where the people do, in a way, have tribunes.

Indeed, one sees everywhere in the activities of despotic government that the people, led by themselves, always carry things as far as they can go; all the disorder they commit is extreme; whereas, in monarchies, things are very rarely carried to excess. The leaders fear for themselves; they fear being abandoned; the intermediate dependent powers[34] do not want the people to have the upper hand too much. Rarely are the orders of the state entirely corrupted. The prince depends on these orders; seditious men, who have neither the will nor the expectation of overturning the state, have neither the power nor the will to overthrow the prince.

In these circumstances, people of wisdom and authority intervene; temperings are proposed, agreements are reached, corrections are made; the laws become vigorous again and make themselves heard.

Thus all our histories are full of civil wars without revolutions; those of despotic states are full of revolutions without civil wars.

[33][Cicero] *De legibus*, bk. 3 [3.10.23].

[34]See above, bk. 2, chap. 4, n. 22.

Those who have written the history of the civil war of some states, even those who have fomented them, have sufficiently proven how rarely princes should be suspicious of the authority they leave to certain orders in return for their service, for, even in their frenzy, these orders have longed only for the laws and their duty and have slowed the ardor and impetuousity of factious men more than they were able to serve them.[35]

Cardinal Richelieu, thinking perhaps that he had degraded the orders of the state too much, has recourse to the virtues of the prince and his ministers to sustain it,[36] and he requires so many things of them that, in truth, only an angel could have so much care, so much enlightenment, so much firmness, and so much knowledge; one can scarcely flatter oneself that, between now and the dissolution of monarchies, there could ever be such a prince and such ministers.

Just as the peoples who live under a good police[h] are happier than those who run about in the forest, without rule and without leaders, so monarchs who live under the fundamental laws of their state are happier than despotic princes, who have nothing to rule their people's hearts or their own.

[35] *Memoirs* of the Cardinal de Retz and other histories.
[36] [Cardinal Richelieu] *Testament politique* [pt. 1, chap. 6, sec. 8; 1947 edn].

CHAPTER 12

Continuation of the same subject

Let one not seek magnanimity in despotic states; there, the prince could not give a greatness that he himself does not have: there is no glory there.

In monarchies one sees the subjects around the prince receive his light; there, as each one has, so to speak, a larger space, he can exercise those virtues that give the soul not independence but greatness.

CHAPTER 13

The idea of despotism

When the savages of Louisiana want fruit, they cut down the tree and gather the fruit.[37] There you have despotic government.

[37] *Lettres édifiantes et curieuses*, bk. 2, p. 315 [Lettre du P. Gabriel Marest, Cascaskias, Illinois, November 9, 1712; vol. 11, 315; 1715 edn].

CHAPTER 14

How the laws are relative to the principle of despotic government

Despotic government has fear as its principle; and not many laws are needed for timid, ignorant, beaten-down people.

Everything should turn on two or three ideas; therefore, there must be no new ones. When you instruct a beast you take great care not to let him change masters, training, or gait; you stamp his brain with two or three impulses and no more.

When the prince is enclosed, he cannot end his stay among sensual pleasures without distressing all those who keep him there. They cannot allow his person and his power to pass into other hands. Therefore, he rarely wages war in person and scarcely dares have it waged by his lieutenants.

Such a prince, accustomed to meeting no resistance in his palace, becomes insulted at that offered him by armed men; he is, therefore, usually moved by anger or vengeance. Besides, he cannot have an idea of true glory. Therefore, wars have to be waged there in all their natural fury, and the right of nations has to be less extensive than elsewhere.

Such a prince has so many faults that one must fear exposing his natural foolishness to the light of day. He is hidden, and one remains in ignorance of his condition. Fortunately, men in these countries are such that they need only a name to govern them.

Charles XII, meeting some resistance in the senate of Sweden while he was at Bender, wrote that he would send one of his boots to command it. The boot would have governed like a despotic king.

If the prince is taken prisoner, he is supposed dead, and another ascends the throne. The treaties made by the prisoner are null; his successor would not ratify them. Indeed, as he is the laws, the state, and the prince, and as from the moment he is no longer the prince, he is nothing, if he were not considered dead, the state would be destroyed.

One of the things that led the Turks to decide to make their separate peace with Peter I was that the Muscovites told the vizir that in Sweden another king had been put on the throne.[38]

The preservation of the state is only the preservation of the prince, or rather of the palace in which he is enclosed. Nothing which does not directly menace the palace or the capital makes an impression on ignorant, arrogant, and biased minds; and, as for the sequence of events, they cannot follow it, foresee it, or even think about it. Politics with its springs and laws should here be very limited, and political government is as simple as civil government.[39]

Everything comes down to reconciling political and civil government with domestic government, the officers of the state with those of the seraglio.

Such a state will be in the best situation when it is able to consider itself as alone in the world, when it is surrounded by deserts and separated from the peoples it calls barbarians. It will be good for the despotism, unable to count on the militia, to destroy a part of itself.

While the principle of despotic government is fear, its end is tranquillity; but this is not a peace, it is the silence of the towns that the enemy is ready to occupy.

Since force is not in the state but in the army that has founded it, that army must be preserved in order to defend the state; however, it is dangerous to the prince. How then is the security of the state to be reconciled with the security of the person?

I beg you to observe with what industry the Muscovite government seeks to escape the despotism which weighs on the government even more than it does on the peoples. Great bodies of troops have been disbanded; penalties for crimes have been lessened; tribunals have

[38] Continuation of Pufendorf, *Histoire universelle*, in the article on Sweden, chap. 10. [This is in Pufendorf's *Histoire de Suède*; 1711; 3, 125; 1748 edn, not *Introduction à l'histoire générale et politique de l'univers*; the boot story is told in Voltaire's *Histoire du Charles XII*, Book 7.]

[39] According to [John] Chardin [*Voyages*, "Description du gouvernement . . . des Persans," chap. 3, "De l'économie politique"; 5, 237; 1811 edn], there is no Council of State in Persia.

been established; some men have begun to be versed in the laws; the peoples have been instructed. But there are particular causes that will perhaps return it to the misfortune it had wanted to flee.

In these states, religion has more influence than in any other; it is a fear added to fear. In Mohammedan empires the peoples derive from religion a part of the astonishing respect they have for their prince.

It is religion that slightly corrects the Turkish constitution. Those subjects who are not attached to the glory and greatness of the state by honor are attached to it by force and by religious principle.

Of all despotic governments, none is more oppressive to itself than the one whose prince declares himself owner of all the land and heir to all his subjects. This always results in abandoning the cultivation of the land and, if the prince is a merchant, in ruining every kind of industry.

In these states, nothing is repaired, nothing improved.[40] Houses are built only for a lifetime; one digs no ditches, plants no trees; one draws all from the land, and returns nothing to it; all is fallow, all is deserted.

Do you think that laws that take away ownership of land and inheritance of goods will diminish the avarice and cupidity of the important men? No: such laws will excite their cupidity and avarice. The important men will be led to take a thousand oppressive measures because they will not consider anything their own but the gold or silver that they can steal or hide.

In order that all not be lost, it is well to moderate the greediness of the prince by some custom. Thus, in Turkey, the prince is usually satisfied to take 3 per cent from the inheritances of the people.[41] But, as the Grand Signior gives most of the land to his militia and disposes of it according to his fancy, as he seizes all the inheritances of the officers of the empire, as, when a man dies without male children, the Grand Signior becomes the owner and the daughters have only the usufruct, it happens that most of the goods of the state are held in precarium.

According to a law of Bantam,[42] the king takes the inheritance,

[40] See [Paul] Rycaut, *The History of the Present State of the Ottoman Empire*, p. 196 [bk. 1, chap. 17, pp. 29–30; 1703 edn].

[41] Concerning inheritances among the Turks, see [Georges Guillet de Saint-Georges] *Lacédémone ancienne et nouvelle* [bk. 3; p. 463; 1676 edn]. See also [Paul] Rycaut, *The History of the Present State of the Ottoman Empire* [bk. 1, chap. 16; p. 28; 1703 edn].

[42] *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 1 ["Premiers voiages des Hollandais aux Indes Orientales"; 1, 384; 1702 edn; 1, 348; 1725 edn]. The

including the wife, the children, and the house. In order to elude the most cruel provision of this law, one is obliged to marry children at the age of eight, nine, or ten, and sometimes even younger, so that they do not remain an unfortunate part of the father's inheritance.

In states where there are no fundamental laws, the inheritance of the empire cannot be fixed. The prince elects from within his family or from outside it the one who is to wear the crown. It would be vain to establish inheritance by the eldest; the prince could always choose another. The successor is declared either by the prince himself, by his ministers, or by a civil war. Thus, this state has one more reason for dissolution than a monarchy.

As each prince of the royal family is equally entitled to be elected, it happens that the one who ascends to the throne immediately has his brothers strangled, as in Turkey; or blinded, as in Persia; or driven mad, as with the Moguls; and, if these precautions are not taken, as in Morocco, each time the throne is vacated a horrible civil war follows.

According to the constitutions of Muscovy,[43] the czar can choose whomever he wants as his successor, either from within his family or from outside it. The establishment of such a succession causes a thousand revolutions and renders the throne as unsteady as the succession is arbitrary. As one of the most important things for the people to know is the order of succession, the best one is that which is most obvious, such as birth and a certain order of birth. Such a provision checks intrigues and stifles ambition; the spirit of a weak prince is no longer captive, and the dying are not made to speak.

When a fundamental law establishes the order of succession, one prince alone is the successor, and his brothers have no real or apparent right to contend for the crown. One can neither presume nor bring to bear a particular will of the father. It is, therefore, no more a question of checking the king's brother or of killing him than it is of checking or killing any other subject at all.

But in despotic states, where the prince's brothers are equally his slaves and his rivals, prudence requires that they be imprisoned, especially in Mohammedan countries, where the religion regards

law of Pegu is less cruel: if one has children, the king inherits only two-thirds. Ibid., vol. 3, p. 1 ["Second voiage d'Etienne van der Hagan," 3, 73; 1705 edn; 3, 69; 1725 edn].

[43] See the different constitutions, particularly that of 1722. [*Polnoe sobranie zakonov Rossiiskoi imperii s 1649 goda*, no. 3893, February 5, 1722, 6, 496–497; 1830 edn.]

victory or success as a judgment of god, so that no one is sovereign there by right, but only in fact.

In states where the princes of the blood see that they will be enclosed or put to death if they do not ascend to the throne, ambition is excited much more than among ourselves, where princes of the blood enjoy a condition which, though not as satisfying to ambition, is perhaps more satisfying to moderate desires.

In despotic states princes have always abused marriage. They usually take several wives, especially in that part of the world, Asia, where despotism is, so to speak, naturalized. They have so many children that they can scarcely have any affection for them, nor can the children have any for their brothers.

The reigning family resembles the state; it is too weak, and its leader is too strong; it seems extensive, and it amounts to nothing. Artaxerxes[44] had all his children murdered for having plotted against him. It is not credible that fifty children would conspire against their father, and still less that they would conspire because he had refused to yield his concubine to his eldest son. It is simpler to believe that this was some intrigue in those seraglios of the East, those places where artifice, wickedness, and deceit reign in silence and are covered by the darkness of night, where an old prince who becomes more imbecilic every day is the first prisoner of the palace.

After all we have just said, it seems that human nature would rise up incessantly against despotic government. But, despite men's love of liberty, despite their hatred of violence, most peoples are subjected to this type of government. This is easy to understand. In order to form a moderate government, one must combine powers, regulate them, temper them, make them act; one must give one power a ballast, so to speak, to put it in a position to resist another; this is a masterpiece of legislation that chance rarely produces and prudence is rarely allowed to produce. By contrast, a despotic government leaps to view, so to speak; it is uniform throughout; as only passions are needed to establish it, everyone is good enough for that.

[44] See Justin [*Epitoma historiarum Philippicarum* 10.1].

CHAPTER 15

Continuation of the same subject

In hot climates, where despotism usually reigns, passions make themselves felt earlier and are also deadened sooner;[45] the spirit ages more quickly; the perils of dissipating one's goods are not as great; it is not as easy to distinguish oneself, and there is not as much commerce among the young, who are shut in at home; one marries younger; one can, therefore, come of age earlier than in our European climates. In Turkey, one reaches majority at the age of fifteen.[46]

The surrender of goods has no place there; in a government where no one is assured of his fortune, one's lending is based on persons rather than on goods.

This surrender enters by nature into moderate governments,[47] and above all into republics, because there one should have greater trust in the citizens' integrity and because of the gentleness that should be inspired by a form of government that each seems to have given to himself.

If the legislators in the Roman republic had established the surrender of goods,[48] Rome would not have been thrown into so many seditions and civil discords and would have risked neither the dangers of those ills nor the perils of the remedies.

Poverty and the uncertainty of fortunes naturalizes usury in despotic states, as each one increases the price of his silver in proportion to the peril involved in lending it. Therefore, destitution is omnipresent in these unhappy countries; there everything is taken away including the recourse to borrowing.[k]

It follows that a merchant cannot engage in much commerce there;

[45] See [bk. 14], "On the laws in relation to the nature of the climate."

[46] [Georges] Guillet de Saint-Georges, *Lacédémone ancienne et nouvelle* [bk. 3], p. 463 [1676 edn].

[47] It is the same for extensions of credit in surrenders of goods [bankruptcies] in good faith.

[48] It was established only by the Julian law, *De cessione bonorum*; one avoided prison and the ignominious surrenders of one's goods. [See *Corpus Juris Civilis*, *Code* 7.71.4; *qui bonis cedere possunt*. See also Gaius, *Institutes* 3.78; this passage, however, was certainly unknown to M., for the manuscript containing it was not discovered until 1816 by Niebuhr. M. presumes, as we do today, that this is one of Julius Caesar's laws on the debtor problem.]

he lives from day to day; if he burdened himself with many commodities, he would lose more on the interest owed on the purchase than he would make on the commodities. Thus the laws of commerce scarcely apply there; these laws amount only to a simple police.

Government could not be unjust without hands to exercise its injustices; now, it is impossible for these hands not to be used on their own behalf. Therefore, embezzlement is natural in despotic states.

As this is the ordinary crime there, confiscations are useful. In this way the people are consoled; the silver from confiscations amounts to a substantial tax that the prince would find difficult to levy on his downtrodden subjects; there is not even any family in this country one wants to preserve.

In moderate states, it is entirely different. Confiscations would render the ownership of goods uncertain; they would despoil innocent children; they would destroy a family man when it was only a question of punishing a guilty man. In republics, confiscations would have the ill effect of taking away the equality which is their soul, by depriving a citizen of his physical necessities.[49]

A Roman law[50] wants confiscation in only the most serious case of the crime of high treason. It would often be very wise to follow the spirit of this law and limit confiscation to certain crimes. In those countries where local custom has made provision for *goods by inheritance*, as Bodin[51] aptly states, one must confiscate only those that are *acquired*.[l]

[49] It seems to me that confiscations were too much loved in the republic of Athens.

[50] *Authentics*, *Bona damnatorum*, *Code* [*Corpus Juris Civilis*, *Code* 9.49.10; *Novel.* 134,c.13]; *de bonis proscriptorum seu damnatorum*.

[51] [Jean Bodin, *The Six Books of a Commonwealth*] bk. 5, chap. 3 [bk. 5, chap. 3; p. 581; 1962 edn].

CHAPTER 16

On the communication of power

In despotic government, *power* passes entirely into the hands of the one to whom it is entrusted. The vizir is the despot himself, and each individual officer is the vizir. In monarchical government, power is not

applied without some mediation; the monarch, in giving it, tempers it.[52] He distributes his authority in such a way that he never gives a part without retaining a greater part.

Thus, in monarchical states individual governors of towns are not so answerable to the governor of the province as not to be even more answerable to the prince, and individual officers of military units are not so dependent upon the general as not to have an even greater dependence upon the prince.

In most monarchical states it has wisely been established that those whose command is somewhat extensive are not attached to any body of militia, with the result that, as their command derives only from the particular will of the prince, who employs them or not, they are, in a way, in service and, in a way, outside it.

This is incompatible with despotic government. For, if those who had no current employment nevertheless had prerogatives and titles, there would be men in the state who were great in themselves, and this would run counter to the nature of this government.

If the governor of a town were independent of the pasha, there would have to be constant temperings to accommodate the two of them, an absurdity in a despotic government. And, in addition, if an individual governor could disobey, how could the pasha personally answer for his province?

In this government authority cannot be counter-balanced; neither that of the lowest magistrate nor that of the despot. In moderate countries law is everywhere wise; it is known everywhere, and the lowest of the magistrates can follow it. But in despotism, where law is only the will of the prince, even if the prince is wise, how can a magistrate follow a will that he does not know? He must follow his own.

Furthermore, as law is only what the prince wants, and the prince is able to want only what he knows, surely there must be an infinite number of people who want in his name and in the same way he does.

Finally, as law is the momentary will of the prince, those who want in his name necessarily want instantly as he does.

[52] "The light of Phoebus is usually sweeter/ As it sets" [L.]. [Seneca, *Tragedies*, *Troades* 11.1140–1141.]

CHAPTER 17

On presents

In despotic countries the usage is that one does not approach a superior, even a king, without giving him a present. The emperor of the Moguls[53] does not accept requests from his subjects unless he has received something from them. These princes go so far as to corrupt their own pardons.

It should be this way in a government where no one is a citizen, in a government where one is filled with the idea that the superior owes nothing to the inferior, in a government where men believe themselves bound only by the chastisements that the former give the latter, in a government where there is little public business and where one is rarely introduced into the presence of an important man to request something of him, and even more rarely to complain to him.

Presents are an odious thing in a republic because virtue has no need of them. In a monarchy, honor is a stronger motive than presents. But in the despotic state, where there is neither honor nor virtue, one can decide to act only in anticipation of the comforts of life.

In accordance with his ideas about the republic, Plato[54] wanted those who received presents for doing their duty to be punished by death. *One must not accept them*, he states, *either for good things or for bad.*

It was a bad law of the Romans[55] that permitted magistrates to accept small presents[56] provided they did not exceed one hundred ecus per year. Those to whom nothing is given desire nothing; those to whom a little is given soon desire a little more and then a great deal. Besides, it is easier to convict the one who ought to take nothing but takes something than it is to convict the one who takes more when he ought to take less and who always finds plausible pretexts, excuses, causes and reasons for doing so.

[53] *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 1, p. 80 ["Avis sur le Commerce des Indes Orientales. Description de leur maniere de vivre"; 1, LXXXVIII; 1725 edn].
[54] [Plato] *Laws*, bk. 12 [955c–d].
[55] Law 6, par. 2, *Digest* [*Corpus Juris Civilis*, *Digest* 48.11.6.2]; *de lege Julia repetundarum*.
[56] *Munuscula*: "A small gift."

CHAPTER 18

On rewards given by the sovereign

In despotic governments, where, as we have said, one decides to act only in anticipation of the comforts of life, the prince who gives rewards has only silver to give. In a monarchy, where honor alone reigns, the prince would reward only with distinctions were it not that the distinctions established by honor are joined with a luxury that necessarily produces needs; therefore, the prince rewards with honors that lead to fortune. But in a republic under the reign of virtue, a motive that suffices in itself and excludes all others, the state rewards only with testimonies to that virtue.

It is a general rule that great rewards in a monarchy and a republic are a sign of their decadence because they prove that the principles have been corrupted: on the one hand, the idea of honor no longer has as much force, on the other, citizenship has been weakened.[m]

The worst Roman emperors were those who gave the most: for example, Caligula, Claudius, Nero, Otho, Vitellius, Commodus, Heliogabulus, and Caracalla. The best, such as Augustus, Vespasian, Antoninus Pius, Marcus Aurelius, and Pertinax, were frugal. Under the good emperors, the state regained its principles; the treasure of honor replaced other treasures.

CHAPTER 19

New consequences of the principles of the three governments

I cannot bring myself to finish this book without making some further applications of my three principles.

FIRST QUESTION. Should the laws force a citizen to accept public employments? I say that they should in republican government and not in monarchical. In the former, magistracies are testimonies to virtue; they are depositories entrusted by the homeland to a citizen who should live, act, and think only for its sake; he cannot, therefore, refuse them.[57]

[57] Plato, in his *Republic*, bk. 8 [557e], puts such refusals among the marks of corruption of the republic. In his *Laws*, bk. 6 [756b–e], he wants to punish them by a fine. In Venice, they are punished by exile.

In the latter, magistracies are testimonies to honor; now, such is the eccentricity of honor that it is pleased to accept magistracies only when it wants and in the manner it wants.

The late king of Sardinia[58] punished those who refused the dignities and employments of his state; unwittingly he followed republican ideas. His manner of governing, however, proves sufficiently that this was not his intention.

SECOND QUESTION. Is it a good maxim whereby a citizen can be obliged to accept a place in the army below one he has previously held? Among the Romans the captain often served the next year under his lieutenant.[59] This is because virtue here asks for the continuous sacrifice to the state of oneself and one's aversions. But in monarchies, honor, true or false, cannot suffer that which it calls degradation.

In despotic governments where honor, posts, and ranks are equally abused, it is indifferent whether a lout is made from a prince or a prince from a lout.

THIRD QUESTION. Shall civil and military employments be given to one person? They must be united in a republic and separated in a monarchy. In republics it would be very dangerous to make the profession of arms a particular estate distinct from that of civil functions; and, in monarchies, there would be no less peril in giving the two functions to the same person.

One takes up arms, in the republic, only to defend the laws and the homeland; it is because one is a citizen that one becomes, for a time, a soldier. If these were two distinct estates, the one who bore arms and believed himself a citizen would come to feel he was only a soldier.

In monarchies, the object of men of war is only glory, or at least honor or fortune. One should be very careful not to give civil employments to such men; they must, on the contrary, be contained by civil magistrates, and they must not have at the same time both the people's trust and the force to abuse it.[60]

[58] Victor Amedeus [Victor Amedeus II, 1666–1732].

[59] When some centurions asked the people what employments they had had, one centurion said, "It is just, my companions, for you to esteem as honorable any post in which you defend the republic," Livy, bk. 42 [42.34.15].

[60] "Lest political power be transferred to the best of the nobles, Gallienus forbade the senate military service, and even entry to the army" [L.]. Aurelius Victor, *De viris illustribus* [*De Caesaribus* 33.34].

In a nation where the republic hides under the form of monarchy, observe how a particular estate for fighting men is feared and how the warrior still remains a citizen or even a magistrate, so that these titles serve as a pledge to the homeland so that it is never forgotten.

That division of the magistracies into civil and military ones, which the Romans made after the loss of the republic, was not arbitrary. It followed from a change in the Roman constitution; it was in the nature of monarchical government. And in order to temper the military government, the emperors that succeeded Augustus[61] were obliged to finish what he had only begun.[62]

Thus Procopius, rival of Valens for the empire, failed to grasp this when, giving the dignity of proconsul[63] to Hormisdas, prince of the royal blood of Persia, he returned to this magistracy its former command of the armies; but perhaps he had particular reasons for this. A man who aspires to sovereignty seeks what is useful to the state less than what is useful to his cause.

FOURTH QUESTION. Is it suitable for posts to be sold? They should not be sold in despotic states, where the prince must place or displace subjects in an instant.

Venality is good in monarchical states, because it provides for performing as a family vocation what one would not want to undertake for virtue, and because it destines each to his duty and renders the orders of the state more permanent. Suidas[64] aptly says that Anastasius had made a kind of aristocracy of the empire by selling all the magistracies.

Plato[65] cannot endure such venality. "It is," he says, "as if, on a ship, one made someone a pilot or a sailor for his silver. Is it possible that the rule is good only for guiding a republic and bad in all other life employments?" But Plato is speaking of a republic founded on virtue, and we are speaking of a monarchy. Now, in a monarchy, where, if the posts were not sold by a public regulation, the courtiers' indigence and avidity would sell them all the same, chance will produce better

[61] Augustus removed from the senators, proconsuls, and governors, the right to bear arms. Cass. Dio [*Historia Romana*], bk. 33 [53.12.2–3].

[62] Constantine. See Zosimus [*Historiae*], bk. 2 [2.33].

[63] "In accord with ancient custom and the rule of war" [L.]. Ammianus Marcellinus [*Res gestae*], bk. 26 [26.8.12].

[64] Fragments drawn from the *Ambassades* of Constantine Porphyrogenitus [Suidas, *Lexicon*, "Anastasios," 1, 187; 1938 edn].

[65] [Plato] *Republic*, bk. 8 [551c].

subjects than the choice of the prince. Finally, advancing oneself by way of wealth inspires and maintains industry,[66] a thing badly needed in this kind of government.

FIFTH QUESTION. In which government must there be censors? There must be censors in a republic where the principle of government is virtue. It is not only crimes that destroy virtue, but also negligence, mistakes, a certain slackness in the love of the homeland, dangerous examples, the seeds of corruption, that which does not run counter to the laws but eludes them, that which does not destroy them but weakens them: all these should be corrected by censors.

It is astonishing that an Areopagite was punished for killing a sparrow that had taken refuge in his breast while in flight from a hawk. It is surprising that the Areopagus sent to his death a child who had put out the eyes of a bird. Notice that the question is not that of condemning a crime but of judging mores in a republic founded on mores.

In monarchies there must be no censors; monarchies are founded on honor, and the nature of honor is to have the whole universe as a censor. Every man who commits a breach of honor is subject to the reproaches of even those without honor.

There censors would be spoiled by the very men they ought to correct. Their opposition to the corruption of a monarchy would do no good; the corruption of a monarchy would be too strong for them.

It is manifest that there must be no censors in despotic governments. The example of China seems to be an exception to this rule, but in the course of this work we shall see the singular reasons for its establishment there.

[66] Laziness of Spain: all employments there are given out.

BOOK 6

Consequences of the principles of the various governments in relation to the simplicity of civil and criminal laws, the form of judgments, and the establishment of penalties

CHAPTER I

On the simplicity of civil laws in the various governments

Monarchical government does not admit of such simple laws as does despotic government. In monarchical government there must be tribunals. These tribunals give decisions. These decisions should be preserved; they should be learned, so that one judges there today as one judged yesterday and so that the citizens' property and life are as secure and fixed as the very constitution of the state.

In a monarchy, the administering of a justice[a] that hands down decisions not only about life and goods, but also about honor, requires scrupulous inquiries. The fastidiousness of the judge grows as more issues are deposited[b] with him and as he pronounces upon greater interests.

In the laws of these states, therefore, one must not be astonished to find so many rules, restrictions, and extensions that multiply particular cases and seem to make an art of reasoning itself.

The differences in rank, origin, and condition that are established in monarchical government often carry with them distinctions in the nature of men's goods, and the laws regarding the constitution of this state can increase the number of these distinctions. Thus, among ourselves, goods are inherited, acquired, or seized; dotal, paraphernal; paternal and maternal; those of personal estates of several kinds; free,

[a] See note [g], bk. 2. [b] See note [j], bk. 2.

substituted; those of the lineage or not; noble, freely held, or common goods; ground rents, or those given a price in silver. Each sort of goods is subject to particular rules; these must be followed in order to make disposition of the goods, which further removes simplicity.

In our governments fiefs became hereditary. The nobility had to have had a certain standing so that the owner of a fief would be in a position to serve the prince. This produced many variations; for example, there are countries in which fiefs could not be divided among brothers; in others, younger brothers could receive a more extensive provision of their own.

The monarch, who knows each of his provinces, can set up various laws or permit different customs. But the despot knows nothing and can attend to nothing; he must approach everything in a general way; he governs with a rigid will that is the same in all circumstances; all is flattened beneath his feet.

In monarchies, in proportion to the number of judgments made by tribunals, jurisprudence is responsible for decisions that are sometimes inconsistent, because successive judges think differently, or because suits are sometimes well and sometimes poorly defended, or finally, because an infinity of abuses slips into whatever is touched by the hands of men. This is a necessary ill that the legislator corrects from time to time, as being an ill that is contrary even to the spirit of moderate governments. For when one is obliged to turn to the tribunals, it must be because of the nature of the constitution and not because of the inconsistency and uncertainty of the laws.

There must be privileges in governments where there are necessarily distinctions between persons. This further diminishes simplicity and produces a thousand exceptions.

One of the privileges least burdensome to society and least of all to him who gives it is that of being allowed to plead before one tribunal rather than another. Otherwise there are new suits, that is, those which seek to ascertain the tribunal before which one must plead.

The peoples in despotic states present a very different case. I do not know on what matter the legislator could enact or the magistrate judge in these countries. It follows from the fact that the lands belong to the prince that there are scarcely any civil laws concerning the ownership of lands. It follows from the sovereign's right to inherit that there are no laws concerning inheritance. Because trade belongs exclusively to the despot in some countries, all sorts of laws concerning commerce are

rendered useless. Because marriages are contracted there with female slaves, there are scarcely any civil laws about dowries or the privileges of wives. Another result of the prodigious multitude of slaves there is that scarcely anyone has a will of his own, and consequently scarcely anyone is answerable for his conduct before a judge. Most moral actions, which are nothing but the wills of the father, the husband, or the master, are regulated by them and not by magistrates.

I have almost forgotten to say that since what we call honor is scarcely known in these states, suits concerning honor, such an important subject among us, do not arise there. Despotism is self-sufficient; everything around it is empty. Thus when travelers describe countries to us where despotism reigns, they rarely speak of civil laws.[1]

Therefore, all occasions for disputes and proceedings are taken away there. This is, in part, what makes pleaders so mistreated; the injustice of their request appears baldly, being neither hidden, mitigated, nor protected by an infinity of laws.

[1] No written law has been discovered in Mazulipatam. See the *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 4, pt. 1, p. 391 ["Voyage de Pierre Van den Broeck"; 4, 420; 1705 edn; 4, 392; 1725 edn]. In judgments, the Indians go only by certain customs. The *Veda* and other such books contain religious precepts but not civil laws. *Lettres édifiantes et curieuses*, 14 [Lettre du P. Bouchet, Pontichéry, October 2, 1714; 14, 326–332; 1720 edn].

CHAPTER 2

On the simplicity of criminal laws in the various governments

It is constantly said that justice should be rendered everywhere as it is in Turkey. Can it be that the most ignorant of all peoples have seen clearly the one thing in the world that it is most important for men to know?

If you examine the formalities of justice in relation to the difficulties a citizen endures to have his goods returned to him or to obtain satisfaction for some insult, you will doubtless find the formalities too many; if you consider them in their relation to the liberty and security of the citizens, you will often find them too few, and you will see that the penalties, expenses, delays, and even the dangers of justice are the price each citizen pays for his liberty.

In Turkey, where one pays very little attention to the fortune, life, or honor of the subjects, all disputes are speedily concluded in one way or another. The manner of ending them is not important, provided that they are ended. The pasha is no sooner informed than he has the pleaders bastinadoed according to his fancy and sends them back home.

And, for one to have the passions of pleaders would be quite dangerous there; these passions presuppose an ardent desire to see justice done, a hatred, an active spirit, and a steadfastness in pursuit of justice. All this should be avoided in a government where there must be no feeling other than fear and where everything leads abruptly and unforeseeably to revolutions. Each man should know that the magistrate must not hear of him and that he owes his safety only to his nothingness.

But in moderate states where the head of even the lowest citizen is esteemed, his honor and goods are removed from him only after long examination; he is deprived of his life only when the homeland itself attacks it; and when the homeland attacks his life, it gives him every possible means of defending it.

Thus, when a man makes himself more absolute,[2] his first thought is to simplify the laws. In these states he begins by being struck more by particular drawbacks than by the liberty of the subjects, with which he is not concerned.

One can see that there must be at least as many formalities in republics as in monarchies. In both governments, formalities increase in proportion to the importance given to the honor, fortune, life, and liberty of the citizens.

Men are all equal in republican government; they are equal in despotic government; in the former, it is because they are everything; in the latter, it is because they are nothing.

[2] Caesar, Cromwell, and so many others.

CHAPTER 3

In which governments and in which cases one should judge according to a precise text of the law

The more the government approaches a republic, the more the manner of judging becomes fixed; and it was a vice of the Lacedaemonian republic that the ephors judged arbitrarily without laws to guide them. In Rome, the first consuls judged like the ephors; the drawbacks of this were felt, and precise laws were made.

In despotic states there is no law; the judge himself is the rule. In monarchical states there is a law; and, when it is precise, the judge follows it; when it is not, he seeks its spirit. In republican government, it is in the nature of the constitution for judges to follow the letter of the law. No law can be interpreted to the detriment of a citizen when it is a question of his goods, his honor, or his life.

In Rome, judges pronounced only that the accused was guilty of a certain crime, and the penalty was found in the law, as can be seen from various laws that were made. In England likewise, the jury decides whether the accused is guilty or not of the deed brought before it; and, if he is declared guilty, the judge pronounces the penalty imposed by law for this deed; and he needs only his eyes for that.

CHAPTER 4

On the manner of forming judgments

The different ways of forming judgments follow from this. In monarchies judges assume the manner of arbiters; they deliberate together, they share their thoughts, they come to an agreement; one modifies his opinion to make it like another's; opinions with the least support are incorporated into the two most widely held. This is not in the nature of a republic. In Rome and in the Greek towns, judges did not communicate with each other; each gave his opinion in one of three ways, *I absolve*, *I condemn*, *It is not evident to me*[3] because the people judged or were thought to judge. But the people are not jurists; the

[3] *Non liquet*: "It is not evident."

modifications and temperings of arbiters are not for them; they must be presented with a single object, a deed, and only one deed, and they have only to see whether they should condemn, absolve, or remand judgment.

The Romans, following the example of the Greeks, introduced formulae for actions at law,[4] and established that it was necessary for each suit to be managed by the action proper to it. This was necessary to their manner of judging; the state of the question had to be fixed in order to keep it before the people. Otherwise, in the course of an important suit, the state of the question would continually change and become unrecognizable.

Thus it followed that judges, among the Romans, would admit only the specific request without increasing, diminishing, or modifying anything. But the praetors imagined other formulae for the guidance of actions, which were called *in good faith*,[5] where the manner of pronouncing judgment was more at the disposition of the judge. This arrangement was more in agreement with the spirit of monarchy. Thus, French legal experts say: *In France, all actions are in good faith.*[6]

[4] "Such legal actions were instituted just as the people wished, for they wanted them to be both solemn and certain" [L.]. Law 2, para. 6, *Digest* [*Corpus Juris Civilis*, *Digest* 1.2.2.6]; *de origine juris*.

[5] In which these words were included: *ex bona fide*: "in good faith."

[6] There even the one of whom more is demanded than he owes is condemned to pay the expenses unless he has offered and consigned what he owes.

CHAPTER 5

In which governments the sovereign can be the judge

Machiavelli[7] attributes the loss of liberty in Florence to the fact that the people as a body did not judge the crimes of high treason committed against them, as was done in Rome. Eight judges were established for this: *But*, states Machiavelli, *few are corrupted by few*. I would gladly adopt this great man's maxim; but, as in these cases of treason, political interest forces civil interest, so to speak (for it is always a drawback if the people themselves judge their offenses), the laws must provide, as

[7] [Niccolò Machiavelli] *Discourses on the First Ten Books of Livy*, bk. 1, chap. 7 [bk. 1, chap. 7].

much as they can, for the security of individuals in order to remedy this drawback.

Using this idea, the Roman legislators did two things: they permitted accused men to exile themselves[8] before the judgment[9] and they wanted the goods of condemned men to be made sacred so that the people could not confiscate them. Other limitations placed on the people's power to judge will be seen in Book 11.

Solon knew very well how to curb the people's abuses of their power when judging crimes; he wanted the Areopagus to review the suit, and if it believed the accused to be unjustly acquitted,[10] it accused him again before the people; and if it believed him unjustly condemned,[11] it checked the execution and had the suit judged again: an admirable law, which subjected the people to the censure of the magistracy they most respected and to their own censure as well!

It will be well to slow down such suits, especially after the accused is made a prisoner, so that the people will be calmed and will judge with cool heads.

In despotic states the prince himself can judge. He cannot judge in monarchies: the constitution would be destroyed and the intermediate dependent powers reduced to nothing; one would see all the formalities of judgments cease; fear would invade all spirits; one would see pallor on every face; there would be no more trust, honor, love, security, or monarchy.

Here are some other reflections. In monarchical states, the prince is the party who pursues those who are accused and has them punished or acquitted; if he himself judged, he would be both judge and party.

In these same states, the prince often receives what is confiscated; if he judged the crimes, he would again be both judge and party.

Moreover, he would lose the finest attribute of his sovereignty, which is that of pardoning.[12] It would be senseless for him both to make and unmake his own judgments; he would not want to contradict himself.

[8]This is well explained in the oration of Cicero, *Pro Caecina* [100], at the end.

[9]It was an Athenian law, as appears from Demosthenes. Socrates refused to use it.

[10]Demosthenes [*Orationes*], *De Corona*, p. 494, Frankfurt edition of 1604 [18.133].

[11]See Flavius Philostratus, *Vitae sophistarum*, *Aeschines*, bk. 1 [508 [Olearius]].

[12]Plato does not think that the kings, who are, as he says, priests, can be present at judgments in which condemnations to death, exile, or imprisonment are made [Plato, *Epistolae* 8, 356e–357a].

Beyond the confusion into which this would throw all ideas, one would not know if a man had been acquitted or pardoned.

Louis XIII wanted to be the judge in the case against the Duke de la Valette[13] and for this purpose called into his chambers some officers of the parlement and state councillors; as the king forced them to give an opinion on the warrant for arrest, the president of Bélièvre said "that he saw something strange in this business where a prince would give an opinion in the case of one of his subjects; that kings had kept only pardons for themselves and that they had left condemnations to their officers. And Your Majesty would be glad to see before him at the bar a man, who by your judgment would go to his death in an hour! That the countenance of the prince, who pardons, cannot endure this, that his visage alone suspended the interdicts of churches, and that one should never be anything but satisfied on leaving the presence of the prince." When the merits of the case were judged, the same president said in his opinion, "It is an unexampled judgment, not to say contrary to all examples from the past to the present, that a King of France as judge has, by his opinion, condemned a gentleman to death."[14]

Judgments rendered by the prince would be an inexhaustible source of injustices and abuses; the courtiers would extort his judgments by their badgering. Some of the Roman emperors had a craze for judging; no reigns stunned the universe more by their injustices than these.

Tacitus says,[15] "As Claudius had taken for himself the judgment of suits and the functions of the magistrates, he occasioned all sorts of rapine." Thus when Nero, on becoming emperor after Claudius, wanted to win over men's spirits, he declared "that he would take care not to be the judge of all suits so that the accusers and the accused, within the walls of a palace, should not be exposed to the iniquitous power of a few freed men."[16]

"In the reign of Arcadius," says Zosimus,[17] "the nation of slanderers increased, surrounded the court, and infected it. It was assumed, when a man died, that he had left no children;[18] his goods were given by a

[13]See the account of the case against the Duke de la Valette. It is printed in [Claude de Bourdeille, Comte de] Montrésor, *Memoirs*, vol. 2, p. 62 [2, 296–341; 1723 edn].

[14]This was later changed. See the same account [Claude de Bourdeille, Comte de Montrésor, *Memoirs*, 2, 307–308, 326; 1723 edn].

[15][Tacitus] *Annales*, bk. 11 [11.5].

[16]Ibid. [Tacitus, *Annales*], bk. 13 [13.4].

[17][Zosimus] *Historiae*, bk. 5 [5.24.17–19; 279–280 Bekker].

[18]There was the same disorder under Theodosius the Younger.

rescript of the emperor. For, as the prince was strangely dull-witted and the empress venturesome to excess, she served the insatiable avarice of her domestics and confidantes; so that for moderate people nothing was more desirable than death."

"Formerly," says Procopius,[19] "there were few people at court, but under Justinian, since the judges were no longer free to render justice, the tribunals were deserted, while the prince's palace resounded with the clamor of the parties soliciting suits." Everyone knows how judgments, and even laws, were sold there.

The laws are the prince's eyes; he sees with them what he could not see without them. Does he want to perform the function of the tribunals? Then he works not for himself, but for those who would deceive him.

[19] [Procopius] *Anecdota sive Historia arcana* [30.30–31].

CHAPTER 6

That, in a monarchy, the ministers should not judge

It is also a great drawback in a monarchy for the ministers of the prince themselves to judge contested suits. Today we still see states in which there are innumerable judges to decide suits concerning the fisc and the ministers (who would believe it!) still want to judge them.[c] Reflections on this subject crowd upon me; I shall offer just one.

There is, by the nature of things, a kind of contradiction between the monarch's council and his tribunals. The king's council should be composed of few persons, and the tribunals of the judiciary require many. The reason is that in the king's council one must undertake public business with a certain passion and pursue it likewise; this can be expected only from four or five men who make it their business. Tribunals of the judiciary must, on the contrary, be coolheaded and, in a way, neutral in all matters of business.

[c] 'Translators' parentheses.

CHAPTER 7

On the single magistrate

Such a magistrate can have a place only in despotic government. In Roman history one sees to what point a single judge can abuse his power. How could Appius in his tribunal not have despised the laws, since he violated even the law he had made?[20] Livy tells us of this decemvir's iniquitous distinction. He had induced a man to claim before him that Virginia was his slave; Virginia's relatives asked that, by virtue of his law, she be returned to them until final judgment. He declared that his law had been made only to benefit the father and that, as Virginius was absent, it was not applicable.[21]

[20] See Law 2, para. 24 [*Corpus Juris Civilis*, *Digest* 1.2.24]; *de origine juris et omnium magistratuum et successione prudentum*.

[21] "Since the father of the girl was absent, he thought it an opportune moment to commit an injustice" [L.]. Livy, decade 1, bk. 3 [3.44.5].

CHAPTER 8

On accusations in the various governments

In Rome[22] citizens were permitted to accuse one another. This was established in the spirit of the republic, where each citizen should have boundless zeal for the public good, where it is assumed that each citizen has all the rights of the homeland in his hands. The maxims of the republic were followed under the emperors, and one saw a dreadful kind of man, a band of informers, immediately appear. Whoever had many vices and many talents, a common soul and an ambitious spirit, would seek out a criminal whose condemnation might please the prince; this was the way to advance to honors and to fortune,[23] a thing that we never see among ourselves.

At present we have an admirable law; it wants the prince, who is established in order to see to the execution of the laws, to appoint an officer in each tribunal who will pursue all crimes in his name; thus the office of informer is unknown among us. And if this public avenger

[22] And in many other cities.

[23] See in Tacitus [*Annales* 4.30] the rewards granted to these informers.

were suspected of abusing his ministry, he would be obliged to name the one who had made the denunciation.

In Plato's *Laws*,[24] those who neglect to alert or aid magistrates are to be punished. This would not be suitable today. The party for the public keeps watch for the citizens; it acts, and they are tranquil.[d]

[24] [Plato, *Laws*] bk. 9 [856b–c].

[d] *partie publique*. For Montesquieu's understanding of the historical development of the public prosecutor see 28.36 (note [q], bk. 28).

CHAPTER 9

On the severity of penalties in the various governments

Severity in penalties suits despotic government, whose principle is terror, better than monarchies and republics, which have honor and virtue for their spring.

In moderate states, love of the homeland, shame, and fear of blame are motives that serve as restraints and so can check many crimes. The greatest penalty for a bad action will be to be convicted of it. Therefore in moderate states civil laws will make corrections more easily and will not need as much force.

In these states a good legislator will insist less on punishing crimes than on preventing them; he will apply himself more to giving mores than to inflicting punishments.

Chinese writers have perpetually observed[25] that, in their empire, the more severe the punishments, the nearer the revolution. This is the case because punishments increased in severity to the extent that mores were lost.

It would be easy to prove that in all or nearly all the states of Europe penalties have decreased or increased in proportion as one has approached or departed from liberty.

In despotic countries one is so unhappy that one fears death more than one cherishes life; therefore, punishments should be more severe there. In moderate states one fears the loss of life more than one dreads death as such; punishments that simply suppress life are sufficient there.

[25] I shall show later that China, in this respect, is a case of a republic or a monarchy.

Extremely happy men and extremely unhappy men are equally disposed to harshness: witness monks and conquerors. Only the middling sort, and the mixture of good fortune with bad, offer gentleness and pity.

One can find in the various nations what one sees in men taken individually. There is equal cruelty among savage peoples, who lead a hard life, and among the peoples of despotic governments where fortune favors only one man exorbitantly and abuses all the rest. Gentleness reigns in moderate governments.

When we read in histories the examples of the atrocious justice of the sultans, we feel with a kind of sorrow the ills of human nature.

In moderate governments a good legislator can form anything into penalties. Is it not quite extraordinary that in Sparta one of the principal penalties forbade a man to lend his wife to another or to receive that man's wife or ever to be in his own house except with virgins? In a word, whatever the law calls a penalty is in effect a penalty.

CHAPTER 10

On the old French laws

In the old French laws one surely finds the spirit of monarchy. In cases involving pecuniary penalties, non-nobles are punished less than nobles.[26] It is quite the contrary for crimes;[27] the noble loses his honor and his voice at court while the villein, who has no honor, is punished corporally.

[26] "When complying with a decree of the court, the non-noblemen owe a fine of forty sous and the noblemen sixty pounds." [Jean Boutillier], *Le Grand Coustumier La Somme rural*, bk. 2, p. 198; Got. edn of 1512 [197 v]; [bk. 2, tit. 40, "D'un nobles hommes meffaire"; pp. 864–865; 1621 edn]; and Beaumanoir [*Coûtumes de Beauvaisis*], chap. 61, p. 309 [#1720].

[27] See the *Conseil* of Pierre de Fontaines, chap. 13, chiefly art. 22 [chap. 13, art. 22; pp. 79–80; 1846 edn].

CHAPTER 11

That when a people is virtuous few penalties are needed

The Romans were a people of integrity. Their integrity was so strong that often the legislator needed only to show them the good to have them follow it. It seemed that it was enough to give them counsels instead of ordinances.

Almost all the penalties in the royal laws and in the laws of the Twelve Tables were removed during the republic, either in accordance with the Valerian law,[28] or as a consequence of the Porcian law.[29] One observes that the republic was no more poorly ruled and that no injury to its police resulted.

The Valerian law, which forbade the magistrates to attack in any way a citizen who had appealed to the people, inflicted on one who transgressed the law only the penalty of a reputation for wickedness.[30]

[28] It was made by Valerius Publicola soon after the expulsion of the kings; it was renewed twice, both times by magistrates of the same family, as Livy says, bk. 10 [10.9.3]. It was not a question of giving it more force, but of perfecting its provisions. "More thoroughly inviolate" [L.], Livy says, ibid. [10.9.3].

[29] "The Porcian Law was made to protect the citizens" [L.] [Livy 10.9.4]. It was made in Roman year 454 [300 B.C.].

[30] "It added nothing other than that it be deemed a wicked act" [L.], Livy [10.9.5].

CHAPTER 12

On the power of penalties

Experience has shown that, in countries where penalties are gentle, the citizen's spirit is struck by them as it is elsewhere by heavy ones.

Is some defect felt in a state? A violent government wants to correct it instantly; and, instead of considering that the old laws should be executed, one establishes a cruel penalty that checks the ill then and there. But the spring of the government wears down; the imagination becomes inured to this heavier penalty as it had to the lesser, and as fear of the lesser penalty diminishes, one is soon forced to establish the heavier in every case. Highway robberies were common in some states; one wanted to check them; the punishment of the wheel was invented,

which halted them for a while. Since that time there have been robberies on the highways as before.

In our time desertion has been very frequent; the death penalty has been established against deserters, yet desertion has not diminished. There is a very natural reason for this: a soldier, accustomed to risking his life every day, despises danger or flatters himself that he despises it. He is accustomed to fearing shame every day; the penalty of marking him for life should have been kept.[31] It was claimed that the penalty had been increased and in reality it had been diminished.

Men must not be led to extremes; one should manage the means that nature gives us to guide them. If one examines the cause of every instance of laxity, one will see that it is unpunished crimes and not moderated penalties.

Let us follow nature, which has given men shame for their scourge, and let the greatest part of the penalty be the infamy of suffering it.

If there are countries in which shame is not an effect of punishment, it is a result of tyranny, which has inflicted the same penalties on scoundrels as on good people.

And, if you see other countries in which men are restrained only by cruel punishments, reckon again that this arises largely from the violence of the government, which has employed these punishments for slight transgressions.

A legislator who wants to correct an ill often thinks only of that correction; his eye is on that object and not on its defects. Once the ill has been corrected, only the harshness of the legislator is seen; but a vice produced by the harshness remains in the state; spirits are corrupted; they have become accustomed to despotism.

After Lysander[32] had won a victory over the Athenians, the prisoners were judged; the Athenians were accused of having hurled the captives from two galleys over a precipice and of having resolved, in full assembly, to cut off the hands of any prisoners they might take. The Athenians were all slaughtered except Adeimantus, who had opposed the Athenian decree. Before sending Philocles to his death, Lysander reproached him for depraving the spirit of the Athenians and for giving lessons in cruelty to all Greece.

"After the Argives had had fifteen hundred citizens put to death,"

[31] The nose was broken, and the ears cut off.

[32] Xenophon, *Hellenica*, bk. 2 [2.1.31–32].

says Plutarch,[33] "the Athenians ordered expiatory sacrifices so that the gods would turn the hearts of the Athenians from such a cruel thought."

There are two kinds of corruption: one, when the people do not observe the laws, the other, when they are corrupted by the laws; the latter is an incurable ill because it lies in the remedy itself.

[33] [Plutarch] *Moralia, Praecepta gerendae republicae* [814b].

CHAPTER 13

Powerlessness of Japanese laws

Extravagant penalties can corrupt despotism itself. Let us look at Japan.

In Japan almost all crimes are punished by death[34] because disobedience to such a great emperor as Japan's is an enormous crime. It is not a question of correcting the guilty man but of avenging the prince. These ideas are drawn from servitude and derive chiefly from the fact that the emperor is the owner of all the goods and so almost all crimes are committed directly against his interests.

Lies told to the magistrates are punished by death;[35] a thing that is contrary to natural defense.

There, things that do not appear to be crimes are severely punished: for example, a man who risks silver at gaming is punished by death.

It is true that the astonishing character of these opinionated, capricious, determined, eccentric people, who brave every peril and every misfortune, seems at first sight to absolve their legislators for their atrocious laws. But, are people who naturally despise death and who disembowel themselves at the slightest fancy corrected or checked by the continual prospect of punishments? Or, do they not become accustomed to them?

On the subject of the education of the Japanese, accounts tell us that children must be treated gently because they resist penalties and that slaves should not be treated too roughly because they immediately take

[34] See [Engelbert] Kaempfer [*The History of Japan together with a Description of the Kingdom of Siam, 1690–1692*, appendix 6; 3, 325–326; 1906 edn].

[35] *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 3, part 2, p. 428 ["Voiage de Hagenaar aux Indes Orientales"; 5, 343; 1706 edn; 5, 428; 1725 edn].

a defensive posture. From the spirit that should reign in domestic government, could one not judge what should be carried into political and civil government?

A wise legislator would have sought to lead men's spirits back by a just tempering of penalties and rewards; by maxims of philosophy, morality, and religion, matched to this character; by the just application of the rules of honor; by using shame as a punishment, and by the enjoyment of a constant happiness and a sweet tranquillity. And, if this legislator had feared that men's spirits, accustomed to being checked only by cruel penalties, could no longer be checked by a gentle one, he would have acted[36] silently and imperceptibly and would have moderated the penalty for the crime in the most pardonable particular cases until he could manage to modify it in every case.

But despotism does not know these springs; it does not lead in these ways. It may abuse itself, but that is all it can do. In Japan it has made an effort and has become more cruel than itself.

Souls that are everywhere startled and made more atrocious can be guided only by a greater atrocity.

This is the origin and spirit of the Japanese laws. But these laws had more fury than force. They have succeeded in destroying Christianity, but such unheard-of efforts are a proof of their powerlessness. The laws wanted to establish a good police, and their weakness has appeared even more clearly.

One must read the account of the meeting between the emperor and the deyro of Meaco.[37e] The number of people smothered or killed by rogues then was unbelievable: girls and boys were carried off; they were discovered in the following days exposed in public places, at all hours, entirely naked, sewed up in canvas bags so that they would not know where they had been; men stole what they wanted; horses' stomachs were split open to make their riders fall; coaches were overturned in order to plunder the ladies inside. The Dutch, who were told that they could not spend the night outdoors on the benches without being murdered, departed, and so forth.

I shall briefly mention another point. The emperor, given to

[36] Observe this as a practical maxim in cases where spirits have been spoiled by overly rigorous penalties.

[37] *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 5, part 2 ["Visite du Dairo à l'Empereur du Japon"; 5, 438–440; 1706 edn; 5, 508–511; 1725 edn].

[e] Meaco is today's Kyoto.

infamous pleasures, had not married; he ran the risk of dying without an heir. The deyro sent him two beautiful girls; he married one of them out of respect but had no commerce with her. His nurse sent for the most beautiful woman in the empire. Nothing availed. The daughter of an armourer caught his fancy;[38] his decision was made; he had a son by her. The ladies of the court, outraged that he had preferred a person of such low birth to them, smothered the child. This crime was hidden from the emperor; he would have caused much bloodshed. Therefore, atrocity in the laws prevents their execution. When the penalty is excessive, one is often obliged to prefer impunity.

[38] Ibid. [*Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 5, "Voiage de Hagenaar aux Indes Orientales"; 5, 313; 1706 edn; 5, 392–393; 1725 edn.]

CHAPTER 14

On the spirit of the Roman senate

During the consulate of Acilius Glabrio and Piso, the Acilian law[39] was made in order to check intrigues. Dio[40] says that the senate engaged the consuls to propose it, because the tribune C. Cornelius had resolved to establish terrible penalties for this crime, which the people were strongly inclined to commit. The senate thought that immoderate penalties would certainly terrify men's spirits but that, as a result, no one could be found to accuse or condemn; whereas, with moderate penalties, there would be both judges and accusers.

[39] The guilty ones were condemned to a fine; they could no longer be admitted to the order of the senators or named to any magistracy. Cass. Dio, bk. 36 [*Historia Romana* 36.38.1].
[40] Ibid. [Cass. Dio, *Historia Romana* 36.38.4–5.]

CHAPTER 15

On the laws of the Romans in respect to penalties

I am strengthened in my maxims when I find the Romans on my side; and I believe that penalties depend on the nature of the government, when I see that, in step with the changes in their political laws, this great

people made corresponding changes in the penalties of the civil laws.

The *royal* laws, made for a people composed of fugitives, slaves, and brigands, were very severe. The spirit of the republic would have required the decemvirs not to put these laws in the Twelve Tables, but those who aspired to tyranny cared nothing about following the spirit of the republic.

Concerning the punishment of Mettius Fufetius, the dictator of Alba, whom Tullus Hostilius condemned to be pulled apart by two chariots, Livy says[41] that this was the first and final punishment that bore witness to one's failure to remember humanity. He is mistaken: the law of the Twelve Tables is full of very cruel provisions.[42]

The provision that best reveals the design of the decemvirs is the pronouncement of the death penalty against authors of libels and against poets. That is scarcely in accord with the genius of the republic, where the people like to see important men humbled. But those who wanted to overthrow liberty feared writings that could call back the spirit of liberty.[43]

After the expulsion of the decemvirs, almost all of the laws with fixed penalties were removed. They were not expressly abrogated; but, as the Porcian law prohibited putting Roman citizens to death, they were no longer applicable.

To that time one can ascribe what Livy[44] says of the Romans, that never had a people more loved moderation in penalties.

If one adds, to the gentleness of penal laws, the right of the accused to depart before the judgment, one will see that the Romans followed that spirit which I have said is natural to a republic.

Sulla, who confused tyranny, anarchy, and liberty, made the Cornelian laws. His regulations seem to have been made only in order to establish crimes. Thus, defining an infinite number of actions as murder, he found murderers everywhere; and by a practice that was followed only too often, he laid snares, scattered thorns, and opened abysses in the path of all citizens.

Almost all of Sulla's laws stipulated only the interdiction of water and

[41] [Livy] bk. 1 [1.28.10].
[42] In it one finds the punishment by fire, penalties that are almost always capital, the theft punished by death, etc.
[43] Sulla, moved by the same spirit as the decemvirs, increased, as they did, the penalties against satirical writers.
[44] [Livy] bk. 1 [1.28.11].

fire.[f] Caesar added the confiscation of goods[45] because the rich, who kept their patrimony even in exile, were bolder in committing crimes.

After the emperors had established a military government, they soon felt that it was no less terrible for them than for their subjects; they sought to temper it; they believed they needed dignities and the respect accompanying them.

They drew somewhat nearer to monarchy and divided penalties into three classes:[46] those regarding the principal persons of the state,[47] which were gentle enough; those inflicted on persons of an inferior rank,[48] which were more severe; and finally, those penalties concerning only those of low condition,[49] which were the most strict.

The ferocious and senseless Maximinus excited, so to speak, the military government, which should have been gentle. The senate learned, says Capitolinus,[50] that some men had been hung on crosses, others thrown to beasts or wrapped in the skins of freshly killed beasts without regard to dignities. He seemed to want to exert military discipline, the model on which he intended to regulate civil business.

One can find in the *Considerations on the Grandeur of the Romans and Their Decadence* how Constantine changed the military despotism into a military and civil despotism and drew nearer to monarchy.[g] In that book one can follow the various revolutions of this state and see how it went from strictness to indolence, and from indolence to impunity.

[45] "He increased the penalties for crimes, since those with wealth were more apt to commit them, because, if they were found guilty, they would be exiled but their property would remain untouched" [L.]. Suetonius, *Vitae duodecim Caesarum, Julius Caesar* [42].

[46] See Law 3 [*Corpus Juris Civilis, Digest* 48.8.3.5]; *ad legem Corneliam de sicariis et veneficiis*; and a great number of others in the *Digest* and the *Code* [*Code* 9.16 *ad legem Corneliam de sicariis*].

[47] *Sublimiores*: "more distinguished."

[48] *Medios*: "middling."

[49] *Infimos*: "lowest, meanest." Law 3 [*Corpus Juris Civilis, Digest* 48.8.3.5]; *ad legem Corneliam de sicariis et veneficiis*.

[50] Julius Capitolinus, *Maximini duo* [8].

[f] The "interdiction of fire and water" was a decree prohibiting the return of an exiled person.

[g] See chapter 17 of M.'s *Considerations* (1965 edn, pp. 157–158).

CHAPTER 16

On the just proportion between the penalties and the crime

It is essential for penalties to be harmonious among themselves, because it is essential that the greater crime be avoided rather than the lesser one, the one that attacks society rather than the one that runs less counter to it.

"An impostor,[51] who called himself Constantine Ducas, sparked a great uprising in Constantinople. He was caught and condemned to be flogged, but, as he had accused eminent persons, he was condemned to be burned as a slanderer." It is singular that one should have apportioned penalties in this way between the crime of high treason and that of calumny.

This recalls a remark of Charles II, King of England. He passed a man in the pillory; he asked why he was there. *Sire*, he was told, *he has written libels against your ministers. The great fool*, said the king, *why didn't he write them against me? Nothing would have happened to him.*

"Seventy persons conspired against the emperor Basil;[52] he had them thrashed; their hair and beards were burned. When a stag caught the emperor's belt with his antlers, one of his attendants drew his sword, cut the belt, and freed him; the emperor had him beheaded, because, the emperor said, 'he had drawn his sword against him.' " Who could believe that these two judgments were rendered under the same prince?

Among ourselves, it is a great ill that the same penalty is inflicted on the highway robber and on the one who robs and murders. For the public safety, it is evident that there must be some difference in the penalties.

In China robbers who are cruel are cut to bits,[53] the others are not; because of this difference, one robs there but does not murder.

[51] *History* of Nicephorus, patriarch of Constantinople. [Not Nicephorus but Leo the Grammarian, *Chronographia*, "Constantinus," CSHB 47.321–322; M. is quoting from Louis Cousins, *Histoire de Constantinople* 3. 484; 1685 edn.]

[52] *History* of Nicephorus. [Not Nicephorus but Leo the Grammarian, *Chronographia*, "Basil," CSHB 47. 261–262; M. is quoting here from Louis Cousins, *Histoire de Constantinople*, 3. 438; 1685 edn.]

[53] Father [Jean Baptiste] du Halde [*Description de l'Empire de la Chine*], vol. 1, p. 6 ["Idée générale de l'Empire de la Chine"; 1, 5 P; 1, 6 H; 1, 6 L].

In Muscovy, where the penalty for robbery is the same as for murder, one always murders.[54] Dead men, they say, tell no tales.

When there is no difference in the penalty, there must be some difference in the expectation of pardon. In England robbers do not murder because, unlike murderers, they can expect to be transported to the colonies.

Letters of pardon are a great spring of moderate governments. The power of the prince to pardon, executed wisely, can have admirable results. The principle of despotic government, a government which does not pardon and which is never pardoned, deprives it of these advantages.[h]

[54] [John] Perry, *The State of Russia Under the Present Czar* [p. 229; 1967 edn].

[h] In this sentence the prince and the principle of despotic government are indistinguishable.

CHAPTER 17

On torture or the question for criminals

Because men are wicked, the law is obliged to assume them to be better than they are. Thus the deposition of two witnesses is enough in the punishment of all crimes. The law believes them as if they spoke with the mouth of truth. Also, every child conceived during marriage is judged legitimate; the law trusts the mother as if she were modesty itself. Though the law is forced to make the preceding assumptions, it is not forced to use the *question* in criminal cases. Today we see a well-policed nation[55] reject it without meeting drawbacks. The use of the question is, therefore, not necessary by its nature.[56]

So many clever people and so many men of genius have written

[55] The English nation.

[56] The citizens of Athens could not be put to the *question* (Lysias, *Orationes*, *Against Agoratus* [13.25–28]), except in the crime of high treason. The *question* was used thirty days after the condemnation: C. Chirius Fortunatianus, *Artis rhetoricae*, bk. 2 [1.15; 2.26, 30]. There was no preparatory *question*. As for the Romans, Laws 3 and 4 [*Corpus Juris Civilis*, *Digest* 48.4.3–4 *ad legem Juliam maiestatis*] show that birth, dignity, and the profession of the militia guaranteed protection from the *question*, if it were not a case of the crime of high treason. See the wise restrictions made by the *Lex Wisigothorum* [2.3.4] on this practice.

against this practice that I dare not speak after them. I was going to say that it might be suitable for despotic government, where everything inspiring fear enters more into the springs of the government; I was going to say that slaves among the Greeks and Romans . . . But I hear the voice of nature crying out against me.

CHAPTER 18

On pecuniary penalties and corporal penalties

Our fathers the Germans admitted almost none but pecuniary penalties. These men, who were both warriors and free, considered that their blood should be spilled only when they were armed. The Japanese,[57] by contrast, reject these sorts of penalties on the pretext that rich people would escape punishment. But do not rich people fear the loss of their goods? Cannot pecuniary penalties be proportionate to fortunes? And, finally, cannot infamy be joined with these penalties?

A good legislator takes a middle way;[i] he does not always order pecuniary penalties; he does not always inflict corporal penalties.

[57] See [Engelbert] Kaempfer [*The History of Japan together with a Description of the Kingdom of Siam, 1690–1692*, appendix 6, 3, 325–326; 1906 edn].

[i] *juste milieu.*

CHAPTER 19

On the law of retaliation

Despotic states, which prefer simple laws, make much use of the *law of retaliation*;[58] moderate states sometimes accept it. But the difference is that the former have it exercised strictly, while the others almost always temper it.

The law of the Twelve Tables admitted both; it sentenced in terms of retaliation only when the pleader could not be appeased.[59] After

[58] It is established in the Koran. See the chapter "On the Cow" [2.178].

[59] "If a limb has been broken, unless an agreement be made, there will be retaliation" [L.]. Aulus Gellius [*NA*], bk. 20, chap. 1 [20.1.14].

sentencing, one could pay damage and interest,[60] and the corporal penalty would be converted into a pecuniary penalty.[61]

[60] Ibid. [*NA* 20.1.14].
[61] See also the *Lex Wisigothorum*, bk. 6, tit. 4, paras. 3 and 5 [6.4.3, 5].

CHAPTER 20

On fathers being punished for their children

Fathers are punished in China for the offenses of their children. This was the usage in Peru.[62] It is another punishment derived from despotic ideas.

It is all very well to say that in China the father is punished for not having used that paternal power established by nature and augmented by the laws themselves; this always assumes that there is no honor among the Chinese. Among ourselves, fathers whose children are condemned to punishment and children[63] whose fathers have met the same fate are punished as much by shame as they would be in China by the loss of life.

[62] See Garcilaso [de la Vega, El Inca], *Royal Commentaries of the Incas and General History of Peru* [pt. 1, bk. 2, chap. 12; 1, 95; 1966 edn].
[63] Instead of being punished, said Plato, they must be praised for not resembling their father. [Plato] *Laws*, bk. 9 [855a].

CHAPTER 21

On the clemency of the prince

Clemency is the distinctive quality of monarchs. In a republic, which has virtue as its principle, it is less necessary. In a despotic state, where fear reigns, it is used less, because the important men of the state must be restrained by examples of severity. In monarchies, where one is governed by honor, which often requires what the law prohibits, it is more necessary. Disgrace there is equivalent to a penalty; even the formalities of judgments are punishments. There, shame comes from all sides and forms penalties particular to monarchies.

The important men there are so heavily punished by disgrace, by the often-imaginary loss of their fortune, their credit, their habits, and their pleasures, that strictness in respect to them is useless; it can serve only to take from the subjects the love they bear the person of their prince and the respect they should have for positions.

Just as the instability of important men is in the nature of despotic government, their security enters into the nature of monarchy.

Monarchs have so much to gain from clemency, it is followed by such love, and they draw such glory from it, that it is almost always a fortunate thing for them to have occasion to exercise it; and one can almost always do so in our countries.

There will perhaps be disputes over some branch of their authority but almost never over their whole authority; and, if they sometimes fight for the crown, they never fight for their lives.

But, one will ask, when is one to punish? When to pardon? This is something better felt than prescribed. Though clemency has dangers, they are visible. Clemency is easily distinguished from the weakness that leads the prince to scorn punishing and even to lack the power to do so.

The emperor Maurice[64] resolved never to shed the blood of his subjects. Anastasius[65] did not punish crimes. Isaac the Angel[j] swore that, during his reign, he would put no one to death. The Greek emperors had forgotten that they did not carry the sword in vain.

[64] Evagrius Scholasticus, *Historia ecclesiastica* [6,10; p. 228; 1979 edn].
[65] Suidas, in Constantine Porphyrogenitus [*Extracts of Virtues and Vices*]. [M.'s interpretation follows a Latin translation, not the Greek original. Suidas, *Lexicon*, "Anastasios," 1. 187; Teubner edn, 1938.]

[j] Isaac II Angelus.

BOOK 7

Consequences of the different principles of the three governments in relation to sumptuary laws, luxury, and the condition of women

CHAPTER I

On luxury

Luxury is always proportionate to the inequality of fortunes. If wealth is equally divided in a state, there will be no luxury, for luxury is founded only on the comforts that one can give oneself from the work of others.

For wealth to remain equally divided, the law must give each man only the physical necessities. If men have more than that, some will spend, others will acquire, and inequality will be established.

Assuming physical necessities equal to a given sum, the luxury of those who have only the necessary will be equal to *zero*: he who has its double will have a luxury equal to one; he who has double the goods of the latter will have a luxury equal to three; when the next has yet again the double, he will have a luxury equal to seven; so that, always assuming the goods of the next individual to be twice those of the previous one, luxury will increase by twice plus one, in this progression: 0, 1, 3, 7, 15, 31, 63, 127.

In the republic of Plato,[1a] it was possible to calculate luxury accurately. Four levels of census were established. The first was set precisely at the point where poverty ended; the second at double the first, the third triple, and the fourth, quadruple. In the first census, luxury was equal to *zero*: it was equal to one in the second, to two in the

[1] The first census was the hereditary based on amounts of land, and Plato wanted no one to have more than triple the hereditary lot in other effects. See his *Laws*, bk. 5 [744d–e].

[a] In the *Pensées*, 1378 (1452), Montesquieu speaks of "Plato's two *Republics*."

third, to three in the fourth; and it followed arithmetic proportion accordingly.

The luxury of the various peoples in regard to each other exists in each state as a compound ratio of the inequality of fortunes among the citizens and the inequality of wealth of the various states. In Poland, for example, there is an extreme inequality in fortunes, but the poverty of the whole prevents it from having as much luxury as would a richer state.

Luxury is also proportionate to the size of the towns and above all of the capital, so that luxury exists in a compound ratio of the wealth of the state, the inequality of the fortunes of individuals, and the number of men gathered together in certain places.

The more men there are together, the more vain they are, and the more they feel arise within them the desire to call attention to themselves by small things.[2] If their number is so great that most are unknown to one another, the desire to distinguish oneself redoubles because there is more expectation of succeeding. Luxury produces this expectation; each man takes the marks of the condition above his own. But, by dint of wanting to distinguish themselves, all became equal, and one is no longer distinct; as everyone wants to be looked at, no one is noticed.

The result of all this is a general distress. Those who excel in a profession put their own price on their art; the least talented follow this example; there is no longer harmony between needs and means. When I am forced to plead, I need to be able to pay a lawyer; when I am sick, I must be able to have a doctor.

Some people have thought that gathering of so many people in a capital has diminished commerce because men are no longer a certain distance apart. I do not believe it; men have more desires, more needs, and more fancies when they are together.

[2] In a great town, says [Bernard Mandeville] the author of *The Fable of the Bees*, vol. 1, p. 133 [1732 edn; Remark M; 1, 129–130; 1924 edn], one dresses above one's quality to be esteemed by the multitude as being more than one is. For a weak spirit this pleasure is nearly as great as that from the fulfillment of his desires.

CHAPTER 2

On sumptuary laws in democracy

I have just said that in republics where wealth is equally divided, there can be no luxury; and, as one has seen in Book 5[3] that this equality of distribution made the excellence of a republic, it follows that the less luxury there is in a republic, the more perfect it is. There was none among the first Romans; there was none among the Lacedaemonians; and in republics where equality is not altogether lost, the spirit of commerce, of work, and of virtue makes each one there able and willing to live from his own goods; consequently, there is little luxury.

Laws dividing the fields anew, demanded with such insistence in certain republics, were salutary by their nature. They are dangerous only as a sudden action. By abruptly removing wealth from some and increasing the wealth of others, they make a revolution in each family and must produce one generally throughout the state.

So far as luxury is established in a republic, so far does the spirit turn to the interest of the individual. For people who have to have nothing but the necessities, there is left to desire only the glory of the homeland and one's own glory. But a soul corrupted by luxury has many other desires; soon it becomes an enemy of the laws that hamper it. When those in the garrison at Rhegium became familiar with luxury, they slaughtered the town's inhabitants.

As soon as the Romans were corrupted, their desires became immense. This can be judged by the price they put on things. A jug of Falernian wine[4] sold for one hundred Roman deniers; a barrel of salt meat from the Black Sea cost four hundred deniers; a good cook, four talents; young boys were priceless. When everyone, by a common impulse,[5] was carried to voluptuousness, what became of virtue?

[3] Chaps. 3 and 4.

[4] Fragment of Diodorus Siculus [*Bibliotheca historica*], bk. 365 [37.3.5], reported by Constantine Porphyrogenitus, *Extracts of Virtues and Vices*.

[5] "As everyone strove for the greatest luxury" [L.]. Ibid. [Diodorus Siculus, *Bibliotheca historica*, 37.3.2.]

CHAPTER 3

On sumptuary laws in aristocracy

The misfortune of the badly constituted aristocracy is that its nobles have wealth but should not spend it; luxury, which is contrary to the spirit of moderation, should be banished from it. Therefore, there are only the very poor who cannot get anything and the very rich who cannot spend anything.

In Venice the laws force the nobles to be modest in their tastes. They are so accustomed to thrift that only courtesans can make them give up money. This course is taken to maintain industry: the most despised women spend without danger, while those who pay them tribute lead the most obscure lives in the world.

The good Greek republics had admirable institutions in this regard. The rich used their silver for festivals, musical choruses, chariots, race horses, and onerous magistracies. Wealth there was as burdensome as poverty.

CHAPTER 4

On sumptuary laws in monarchies

"The Suiones, a German nation, honor wealth," says Tacitus,[6] "which makes them live under the government of one alone." This means that luxury is singularly appropriate in monarchies and that they do not have to have sumptuary laws.

As wealth is unequally divided in accord with the constitution of monarchies, there must be luxury. If wealthy men do not spend much, the poor will die of hunger. There the rich must indeed spend in proportion to the inequality of fortunes, and, as we have said, luxury must increase in this proportion. Individual wealth has increased only because it has removed physical necessities from a part of the citizens; these must, therefore, be returned to them.

Thus, for the monarchical state to sustain itself, luxury has to increase from the laborer to the artisan, to the merchant, to the nobles,

[6] [Tacitus] *Germania* [44].

to the magistrates, to the great lords, to the principal revenue officers, to the princes; otherwise, all would be lost.

In the Roman senate, composed of serious magistrates, jurists, and men filled with the idea of the earliest times, one proposed, under Augustus, the correction of the mores and luxury of women. It is interesting to see in Dio[7] the art with which Augustus evaded the importunate demands of these senators. This is because he was founding a monarchy and dissolving a republic.

Under Tiberius, the aediles in the senate proposed the reestablishment of the old sumptuary laws.[8] This enlightened prince opposed it, saying, "The state could not continue to exist, given the present situation. How could Rome live? How could the provinces live? We were frugal when we were citizens of a single town; today we consume the wealth of the whole universe; masters and slaves are made to work for us." He saw clearly that they could no longer have sumptuary laws.

When, under the same emperor, it was proposed to the senate that governors be prohibited from taking their wives with them to the provinces because of the dissoluteness that accompanied them, the proposal was rejected. It was said *that the examples of the harshness of the ancients had been changed into a more pleasant way of living.*[9] One felt that there had to be different mores.

Luxury is, therefore, necessary in monarchical states; it is also necessary in despotic states. In the former, it is a use of the liberty one possesses; in the latter, it is an abuse of the advantages of one's servitude, when a slave, chosen by his master to tyrannize over the other slaves, uncertain of enjoying each day's fortune on the following day, has no other felicity than that of sating the arrogance, desires, and voluptuousness of each day.

All this leads to a reflection: republics end in luxury; monarchies, in poverty.[10]

[7] Cass. Dio [*Historia Romana*], bk. 54 [54.16.3–6].
[8] Tacitus, *Annales*, bk. 3 [3.53].
[9] "Much of the harshness of the ancients has been changed into a better and more pleasant manner" [L.]. Tacitus, *Annales*, bk. 3 [3.34].
[10] "Opulence soon gives rise to poverty" [L.]. Florus [*Epitome rerum Romanorum*], bk. 3 [1.47.12; 3.12.12].

CHAPTER 5

In which cases sumptuary laws are useful in a monarchy

In the middle of the thirteenth century in Aragon sumptuary laws were made in the spirit of the republic, if not for some particular cases. James I ordered that neither the king nor any of his subjects could eat more than two sorts of meat at any meal and that each meat would be prepared in only one way, unless it was game that one had killed oneself.[11]

In our time, sumptuary laws have been made in Sweden, but they have a different purpose from those of Aragon.

A state can make sumptuary laws with the purpose of an absolute frugality; this is the spirit of sumptuary laws in republics, and the nature of the thing shows that this was the purpose of the laws in Aragon.

Sumptuary laws can also have relative frugality for their purpose, when a state, feeling that foreign commodities are too highly priced and that so many exports of its own commodities are required that it would deprive itself of more of what it needs than these foreign commodities can satisfy, absolutely prohibits their entrance; and this is the spirit of the laws made in our time in Sweden.[12] These are the only sumptuary laws suitable to monarchies.

In general, the poorer the state, the more it is ruined by relative luxury, and the more, consequently, it must have relative sumptuary laws. The richer the state, the more its relative luxury enriches it, and one must be careful not to make relative sumptuary laws there. We shall explain this better in the book on commerce.[13] Here only absolute luxury is in question.

[11] Constitution of James I in [Pierre de Marca] *Marca Hispanica*, anno 1234, art. 6, p. 1429 [Appendix, chap. 513, art. 6, pp. 1429–1430; 1688 edn].
[12] Exquisite wines and other precious merchandise were forbidden there.
[13] See bk. 20, chap. 20 [below].

CHAPTER 6

On luxury in China

Particular reasons can require sumptuary laws in some states. The people can become so numerous through the force of the climate, and on the other hand, their means of subsistence can be so uncertain that it is well for all the people to cultivate the land. In these states luxury is dangerous and sumptuary laws should be strict. Thus, in order to know if luxury must be encouraged or proscribed, one should first observe the relation between the number of people and the ease of giving them enough to eat. In England the soil produces much more grain than is needed to feed both those who cultivate the land and those who provide clothing; there they can have frivolous arts and, consequently, luxury. In France enough wheat grows to feed both those who work the land and those employed in manufacture; in addition, commerce with foreigners can bring in return for frivolous things so many necessary things that luxury should scarcely be feared there.

In China, on the other hand, women are so fertile and humankind multiplies so fast that the fields, even heavily cultivated, scarcely suffice to produce enough food for the inhabitants. Consequently, luxury is pernicious there and the spirit of work and economy is as requisite as in any republic whatever.[14] One must apply oneself to the necessary arts and avoid those of voluptuousness.

This is the spirit of the fine ordinances of the Chinese emperors. "Our ancestors," says an emperor of the T'ang family,[15] "took it as a maxim that if there were a man who did not plow the fields, a woman who did not spin, someone in the empire would suffer from cold or hunger . . ." And on this principle he had an infinite number of the bonze monasteries destroyed.[b]

The third emperor of the twenty-first dynasty,[16] when given precious

[14] Luxury has always been checked there.

[15] In an ordinance reported by Father [Jean Baptiste] du Halde [*Description de l'Empire de la Chine*], vol. 2, p. 497 ["La cinquième des années nommées Ho i Tchang"; 2, 596–597 H; 2, 496–497 P].

[16] *Description de l'Empire de la Chine*, twenty-first dynasty, in the work of Father [Jean Baptiste] du Halde, vol. 1 ["21st Dynasty, Tching Tsou, 3rd Emperor"; 1, 447 H; 1, 509 P; 1, 455 L].

[b] The "bonze" were Buddhist monks.

stones found in a mine, had it closed, not wanting to tire his people with working for what could neither feed nor clothe them.

"Our luxury is so great," said Kia-y,[17] "that the people embroider the shoes of the boys and girls whom they are obliged to sell." Is it by occupying so many men with making garments for one that many people are kept from lacking clothes? For each plowman there are ten men who eat the yield of the lands: is this the way to keep many people from lacking food?

[17] In a speech reported by Father [Jean Baptiste] du Halde [*Description de l'Empire de la Chine*], vol. 2, p. 418 ["Discours ou memoire de Kia-y"; 2, 499–500 H; 2, 418 P].

CHAPTER 7

A fatal consequence of luxury in China

One sees in the history of China that it has had twenty-two dynasties in succession; that is, it has suffered twenty-two general revolutions, not counting an infinite number of particular ones. The first three dynasties lasted a long time, because they were wisely governed and because the empire was less extensive than it was to become. But in general, one can say that all these dynasties began well enough. Virtue, care, and vigilance are necessary for China; they were present at the beginning of the dynasties and missing at the end. Indeed, it was natural for emperors raised on the hardship of war and successful in forcing a family inundated by delights from the throne, to preserve the virtue they had found so useful and to fear the voluptuousness they had seen to be so fatal. But, after these first three or four princes, corruption, luxury, laziness, and delights master their successors; they shut themselves in the palace, their spirits grow weak, their lives are short, the family declines; the important men rise up, the eunuchs gain credit, children only are put on the throne; the palace becomes the enemy of the empire; the lazy people living there ruin those who work; the emperor is killed or destroyed by a usurper, who founds a family, whose successor in the third or fourth generation goes into the same palace and shuts himself in again.

CHAPTER 8

On public continence

So many imperfections are attached to the loss of virtue in women, their whole soul is so markedly degraded by this, and when this principal point is removed so many others fall, that in a popular state one can regard public incontinence as the last misfortune and as assurance of a change in the constitution.

Thus good legislators have required a certain gravity in the mores of women. They have proscribed from their republics not only vice but even the appearance of vice. They have banished even that commerce of gallantry that produces laziness, that causes women to corrupt even before being corrupted, that puts a high price on every trifle and reduces the price on what is important, and that makes one no longer conduct oneself by any but the maxims of ridicule that women understand so well how to establish.

CHAPTER 9

On the condition of women in the various governments

In monarchies women have so little restraint because, called to court by the distinction of ranks, they there take up the spirit of liberty that is almost the only one tolerated. Each man uses their charms and their passions to advance his fortune; and as their weakness allows them not arrogance but vanity, luxury always reigns there with them.

In despotic states women do not introduce luxury, but they are themselves an object of luxury. They should be kept in extreme slavery. Each man follows the spirit of the government and brings to his home what he sees established outside of it. As the laws in these states are severe and executed on the spot, one fears that women's liberty could be a cause for bringing suit. Women's quarrels, their indiscretions, their aversions, their inclinations, their jealousies, their spiteful remarks, in short that art by which narrow souls affect generous ones, cannot be without consequence there.

In addition, as the princes in these states trifle with human nature,

they have several wives, and a thousand considerations oblige them to enclose their women.

In republics women are free by the laws and captured by the mores; luxury is banished there and with it, corruption and vices.

In the Greek towns where one did not live under the religion which established that even among men the purity of mores is a part of virtue; in the Greek towns where a blind vice reigned unbridled, where love took only a form one dare not mention while only friendship was to be found within marriages,[18] women's virtue, simplicity, and chastity were such that one has scarcely ever seen a people who had a better police in this regard.[19]

[18] "As for true love," says Plutarch in the *Moralia*, *Amatorius*, p. 600 [750c], "women have no part in it." He spoke as did his age. See Xenophon, in the dialog entitled *Hiero* [1.31–36].

[19] In Athens there was a particular magistrate who watched over the conduct of women.

CHAPTER 10

On the domestic tribunal among the Romans

Unlike the Greeks, the Romans had no special magistrates to inspect women's conduct. The censors paid no more attention to women than to the rest of the republic. The institution of a domestic tribunal[20] replaced the magistracy established among the Greeks.[21]

The husband assembled the wife's relatives and judged her before them.[22] This tribunal maintained mores in the republic. But these same mores maintained this tribunal. Its task was to judge not only the violation of laws but also the violation of mores. Now, in order to judge the violation of mores, one must have mores.

The penalties of this tribunal had to be arbitrary as, indeed, they

[20] Romulus instituted this tribunal, as appears in Dion. Hal. [*Ant. Rom.*], bk. 2, p. 96 [2.25.6].

[21] See Livy, bk. 39 [39.18.6], for the usage made of this tribunal at the time of the conspiracy of the Bacchantes; the assemblies which corrupted the mores of women and youth were deemed conspiracies against the republic.

[22] It appears from Dion. [*Ant. Rom.*], bk. 2 [2.25.6], that by the institution of Romulus, the husband, in ordinary cases, judged alone in the presence of the wife's relatives and that in great crimes, he judged along with five of them. Thus Ulpian [*Fragmenta*], tit. 6, para. 9, 12–13 [6.9.12–13] distinguishes in judgments on mores between those he calls serious and those that are less so: *mores graviores, mores leviores*.

were, for all that concerns mores and all that concerns the rules of modesty can scarcely be included in a code of laws. It is easy to regulate by laws what one owes others; it is difficult to include in them all that one owes oneself.

The domestic tribunal was concerned with the general conduct of women. But there was one crime which, besides being reproved by this tribunal, was also submitted to public accusation: this crime was adultery, either because such a serious violation of mores in a republic is of interest to the government, or because the profligacy of the wife might imply that of the husband, or finally, because one feared that even honest people might prefer hiding the crime to punishing it, might prefer ignorance to vengeance.

CHAPTER 11

How institutions changed in Rome with the government

Just as the domestic tribunal presupposed mores, public accusation also presupposed them; and this made both of them collapse along with the mores and come to an end with the republic.[23]

The establishment of perpetual questions, that is, the division of jurisdiction among the praetors, and the custom that was gradually introduced that the praetors themselves judged all suits,[24] weakened the use of the domestic tribunal; the evidence for this change is the surprise registered by the historians, who regard the judgments Tiberius rendered through this tribunal as singular facts and as the renewal of the old practice.

The establishment of the monarchy and the change in mores also brought public accusation to an end. One could fear that a dishonest man, stung by a woman's sneers, indignant at her refusals, outraged even by her virtue, might form the design of ruining her. The Julian law ordered that one could accuse a woman of adultery only after accusing her husband of encouraging her profligacies, a stipulation which

[23] "Judgments in accord with custom (which previously had had a place in the ancient laws, although not frequently used), are now entirely abolished" [L.; M.'s parentheses]. Law 11, para. 2, *Code* [*Corpus Juris Civilis*, *Code* 5.17.11.2 [2b]]; *de repudiis et judicio de moribus sublato.*

[24] *Judicia extraordinaria*: a judicial procedure that is not the ordinary one.

greatly restrained this accusation and reduced it, so to speak, to nothing.[25]

Sixtus V seemed to want to renew public accusation.[26] But one has to reflect only a little to see that this law, in a monarchy such as his, was even more out of place than in any other.

[25] Constantine removed it entirely: "It is an unworthy thing," he said, "that tranquil marriages should be disturbed by the audacity of strangers." [*Corpus Juris Civilis*, *Code* 9.9.29 (30); *ad legem Juliam de adulteriis et de stupro.*]

[26] Sixtus V ordered that a husband who would not complain of the debauches of his wife be punished with death. See [Gregorio] Leti [*The Life of Pope Sixtus V*, bk. 6; p. 273; 1779 Eng. edn].

CHAPTER 12

On the tutelage of women among the Romans

The Roman institutions put women under perpetual guardianship unless they were under the authority of a husband.[27] This guardianship was given to the closest male relative and it appears, according to a popular phrase,[28] that the women were very hemmed in by it. This was good for the republic, and was not necessary in the monarchy.[29]

It seems, according to the various law codes of the barbarians, that among the early Germans, women were also under perpetual guardianship.[30] This usage passed into the monarchies they founded but it did not continue to exist.

[27] "Except by marriage when she comes into the hands of her husband" [L.].

[28] "Verily, do not be a paternal uncle to me" [L.] [Horace, *Satires* 2.3.88].

[29] The Papian law ordained, under Augustus, that wives who had had three children would be exempt from this tutelage.

[30] Among the Germans this tutelage was called *mundeburdium.*

CHAPTER 13

On penalties established by the emperors against women's debaucheries

The Julian law established a penalty for adultery. But this law and those made later on the same subject were far from indicating the goodness of the mores; on the contrary, they indicated their debasement.

The whole political system with regard to women changed in the monarchy. It was no longer a question of establishing the purity of their mores but of punishing their crimes. New laws were made to punish these crimes only because the violations, which were not the same as the crimes, were no longer punished.

The dreadful excesses of the mores obliged the emperors to make laws to check immodesty at some point; but their intention was not to correct mores generally. Positive facts, reported by historians, are more a proof of this than all the laws could be proof of the contrary. One can see in Dio both the conduct of Augustus in this regard and his evasion of the demands that were made of him when he was praetor and censor.[31]

In the historians, one finds rigid judgments rendered under Augustus and Tiberius against the indecency of certain Roman ladies; but by acquainting us with the spirit of these reigns, they acquaint us with the spirit of these judgments.

Augustus and Tiberius thought principally of punishing the debauchery of their female relatives. They did not punish dissolute mores but a certain crime of impiety or of high treason[32] that they had invented, which was useful both for instilling respect and for taking revenge. Hence the strong protests of the Roman authors against this tyranny.

The penalty in the Julian law was light.[33] The emperors wanted the penalty they had put into the law to be increased in the judgments. This was an object of the historians' invective. They did not examine whether the women deserved to be punished, but whether the law had been violated in order to punish them.

[31] When a young man, who had had evil commerce with his wife before their marriage, was brought before Augustus, Augustus hesitated at length, daring neither to approve nor to punish these things. Finally, collecting his wits, he said, "Seditions have been the cause of great evils; let us forget them." Cass. Dio [*Historia Romana*], bk. 54 [54.16.6]. As the senators had asked him for rulings on the mores of women, he avoided this request, telling them to "correct their wives as he had corrected his own." At that they begged him to tell them how he dealt with his wife, a highly indiscreet question, it seems to me.

[32] "In calling what is a common fault between men and women by the serious names of sacrilege and treason, [Augustus] overstepped the clemency of our ancestors and that of his own laws" [L.]. Tacitus, *Annales*, bk. 3 [3.24].

[33] This law is reported in the *Digest*, but the penalty was not included. One judges it to have been exile by relegation, since that for incest was only exile by deportation [with loss of civil rights]. The law *si quis viduam* and following [*Corpus Juris Civilis*, *Digest* 48.18.5]; *de questionibus*.

One of the principal tyrannies of Tiberius[34] was his abuse of the old laws. When he wanted to push some Roman matron beyond the penalty set by the Julian law, he reestablished the domestic tribunal for her.[35]

These provisions in respect to women involved only the families of senators, not those of the people. One wanted pretexts for accusing the important men, and women's misconduct provided innumerable ones.

Finally, what I have said, that the goodness of mores is not the principle of the government of one alone, was never more verified than under these first emperors; and if there were any doubt about it, one would have only to read Tacitus, Suetonius, Juvenal, and Martial.

[34] "It was characteristic of Tiberius to conceal newly invented crimes by venerable words" [L.]. Tacitus [*Annales* 4.19].

[35] "For her [Appuleia Varilia, the grandniece of Augustus], he [Tiberius] deprecated the more severe penalty, and following ancestral precedent, recommended that she be removed by her relatives beyond the 200th milestone. The adulterer Manlius was outlawed from both Italy and Africa" [L.]. Tacitus, *Annales* bk. 2 [2.50].

CHAPTER 14

Sumptuary laws among the Romans

We have spoken of public incontinence because it is joined to luxury; it is always followed by luxury, and always follows luxury. If you leave the impulses of the heart at liberty, how can you hamper the weaknesses of the spirit?

In Rome, in addition to the general institutions, the censors had the magistrates make several particular laws to keep women frugal. The Fannian, Licinian, and Oppian laws had this purpose. One must see in Livy[36] how agitated the senate became when the women demanded the revocation of the Oppian Law. Valerius Maximus dates the epoch of luxury among the Romans from the time of the repeal of this law.

[36] [Livy] decade 4, bk. 4 [34.1–8].

CHAPTER 15

On dowries and the advantages of marriage in the various constitutions

Dowries should be of a considerable size in monarchies so that married men can sustain their rank and its established luxury. They should be of medium size in republics, where luxury should not reign.[37] They should be nearly nothing in despotic states where women are, in a way, slaves.

The community of goods between husband and wife introduced by French laws is very suitable to monarchical government because it interests women in domestic business and recalls them, as if in spite of themselves, to the care of their households. It is less suitable in a republic, where wives are more virtuous. It would be absurd in despotic states, where wives are themselves almost always a part of the master's property.

Since women are, by their state, sufficiently inclined to marriage, the advantages the law gives them over their husbands' goods are useless. But such advantages would be very pernicious in a republic, because the individual wealth of wives produces luxury. In despotic states the advantages of marriage should be the wife's sustenance and nothing more.

[37] Marseilles was the wisest of the republics of her time; dowries could not exceed one hundred ecus in silver and five in clothing, says Strabo [*Geographica*], bk. 4 [4.1.5].

CHAPTER 16

A fine custom of the Samnites

The Samnites had a custom, which, in a small republic and especially one in the situation theirs had, produced admirable effects. All the young people were assembled and judged. The one who was declared best took for his wife the girl he wanted; he who had the next largest vote then chose; and so on.[38] It was admirable to consider among the

[38] *Fragments* of Nicholas of Damascus [*FGrH*, vol. 2A, 384], from Stobaeus [*Morum mirabilum collectio*, 109], in the collection by Constantine Porphyrogenitus.

goods of the boys only the fine qualities and the services rendered to the homeland. He who was richest in these sorts of goods would choose a girl from among the whole nation. Love, beauty, chastity, virtue, birth, even wealth, all were, so to speak, the dowry of virtue. It would be difficult to imagine a reward that was nobler, greater, less burdensome to a small state, or more able to have an effect on both sexes.

The Samnites were descendants of the Lacedaemonians; and Plato, whose institutions are only the perfection of the laws of Lycurgus, gave almost the same law.[39]

[39] He even permits them to see one another more frequently. [Plato, *Republic* 459d–460c; *Laws* 771e–772a.]

CHAPTER 17

On administration by women

It is against reason and against nature for women to be mistresses in the house, as was established among the Egyptians, but not for them to govern an empire. In the first case, their weak state does not permit them to be preeminent; in the second, their very weakness gives them more gentleness and moderation, which, rather than the harsh and ferocious virtues, can make for a good government.

In the Indies government by women turns out very well; it is established that, if the males do not come from a mother of the same blood, a daughter whose mother is of royal blood succeeds to the throne.[40] She is given a certain number of people to help her carry the weight of the government. According to Mr. Smith,[41] government by women also turns out very well in Africa. If one adds to this the examples of Muscovy and of England, one will see that they succeed equally well in moderate government and in despotic government.

[40] *Lettres édifiantes et curieuses*, 14 [Lettre du P. Bouchet, Pontichéry, October 2, 1714; 14, 382–389; 1720 edn].

[41] [William Smith] *A New Voyage to Guinea*, pt. 2, p. 165 of the translation [pp. 208–209; 1967 edn] on the kingdom of Angona on the Gold Coast.

BOOK 8

On the corruption of the principles of the three governments

CHAPTER 1

The general idea of this book

The corruption of each government almost always begins with that of its principles.

CHAPTER 2

On the corruption of the principle of democracy

The principle of democracy is corrupted not only when the spirit of equality is lost but also when the spirit of extreme equality is taken up and each one wants to be the equal of those chosen to command. So the people, finding intolerable even the power they entrust to the others, want to do everything themselves: to deliberate for the senate, to execute for the magistrates, and to cast aside all the judges.

Then there can no longer be virtue in the republic. The people want to perform the magistrates' functions; therefore, the magistrates are no longer respected. The senate's deliberations no longer carry weight; therefore, there is no longer consideration for senators or, consequently, for elders. And if there is no respect for elders, neither will there be any for fathers; husbands no longer merit deference nor masters, submission. Everyone will come to love this license; the restraint of commanding will be as tiresome as that of obeying had been. Women, children, and slaves will submit to no one. There will no longer be mores or love of order, and finally, there will no longer be virtue.

One sees in Xenophon's *Symposium* an artless depiction of a republic

whose people have abused equality. Each guest in turn gives his reason for being pleased with himself. "I am pleased with myself," says Charmides, "because of my poverty. When I was rich I was obliged to pay court to slanderers, well aware that I was more likely to receive ill from them than to cause them any; the republic constantly asked for a new payment; I could not travel. Since becoming poor, I have acquired authority; no one threatens me, I threaten the others; I can go or stay. The rich now rise from their seats and make way for me. Now I am a king, I was a slave; I used to pay a tax to the republic, today the republic feeds me; I no longer fear loss, I expect to acquire."[a]

The people fall into this misfortune when those to whom they entrust themselves, wanting to hide their own corruption, seek to corrupt the people. To keep the people from seeing their own ambition, they speak only of the people's greatness; to keep the people from perceiving their avarice, they constantly encourage that of the people.

Corruption will increase among those who corrupt, and it will increase among those who are already corrupted. The people will distribute among themselves all the public funds; and, just as they will join the management of business to their laziness, they will want to join the amusements of luxury to their poverty. But given their laziness and their luxury, only the public treasure can be their object.

One must not be astonished to see votes given for silver. One cannot give the people much without taking even more from them; but, in order to take from them, the state must be overthrown. The more the people appear to take advantage of their liberty, the nearer they approach the moment they are to lose it. Petty tyrants are formed, having all the vices of a single one. What remains of liberty soon becomes intolerable. A single tyrant rises up, and the people lose everything, even the advantages of their corruption.

Therefore, democracy has to avoid two excesses: the spirit of inequality, which leads it to aristocracy or to the government of one alone, and the spirit of extreme equality, which leads it to the despotism of one alone, as the despotism of one alone ends by conquest.

It is true that those who corrupted the Greek republics did not always become tyrants. They had applied themselves more to eloquence than to military arts; besides, there was in the hearts of all Greeks an

[a]Xenophon, *Symposium* 4.30–31.

implacable hatred for those who had overthrown the republican government, which made anarchy crumble into dissolution instead of turning into tyranny.

But Syracuse, situated among many little oligarchies that had become tyrannies,[1] Syracuse, whose senate[2] is scarcely ever mentioned in history, endured misfortunes not produced by ordinary corruption. This town, always licentious[3] or oppressed, equally tormented by its liberty and by its servitude, always receiving the one or the other like a tempest, and, in spite of its power abroad, always determined to revolution by the smallest foreign force, had an immense population whose only choice was the cruel one between giving itself to a tyrant and being one.

[1] See Plutarch in the lives of Timoleon and Dion [*Vit.*].
[2] It is the Six Hundred of which Diodorus [Siculus] speaks [*Bibliotheca historica* 19.5.6].
[3] After driving out the tyrants, they made citizens of foreigners and mercenary soldiers, which caused civil wars. Aristotle, *Politics*, bk. 5, chap. 3 [1303a38–1303b2]. As the people had been the cause of the victory over the Athenians, the republic was changed. Ibid., chap. 4 [1304a27–29]. The passion of two young magistrates, the first taking a boy away from the other, the latter debauching the wife of the former, made the form of this republic change. Ibid., bk. 7, chap. 4 [1303b17–26].

CHAPTER 3

On the spirit of extreme equality

As far as the sky is from the earth, so far is the true spirit of equality from the spirit of extreme equality. The former consists neither in making everyone command nor in making no one command, but in obeying and commanding one's equals. It seeks not to have no master but to have only one's equals for masters.

In the state of nature, men are born in equality, but they cannot remain so. Society makes them lose their equality, and they become equal again only through the laws.

The difference between the democracy that is regulated and the one that is not is that, in the former, one is equal only as a citizen, and, in the latter, one is also equal as a magistrate, senator, judge, father, husband, or master.

The natural place of virtue is with liberty, but virtue can no more be found with extreme liberty than with servitude.

CHAPTER 4

A particular cause of the corruption of the people

Great successes, especially those to which the people contribute much, make them so arrogant that it is no longer possible to guide them. Jealous of the magistrates, they become jealous of the magistracy; enemies of those who govern, they soon become enemies of the constitution. In this way the victory at Salamis over the Persians corrupted the republic of Athens;[4] in this way the defeat of the Athenians ruined the republic of Syracuse.[5]

The republic of Marseilles never underwent these great shifts from lowliness to greatness; thus, it always governed itself with wisdom; thus, it preserved its principles.

[4] Aristotle, *Pol.*, bk. 5, chap. 4 [1304a22–24].
[5] Ibid. [Aristotle, *Pol.* 1304a27–29].

CHAPTER 5

On the corruption of the principle of aristocracy

Aristocracy is corrupted when the power of the nobles becomes arbitrary; there can no longer be virtue either in those who govern or in those who are governed.

When the ruling families observe the laws, it is a monarchy that has many monarchs and is quite good by its nature; almost all these monarchs are bound by the laws. But when these families fail to observe the laws, it is a despotic state that has many despots.

In this case the republic continues to exist only with regard to the nobles and only among them. The body that governs is a republic and the body that is governed is a despotic state; they are the two most ill-matched bodies in the world.

Extreme corruption occurs when nobility becomes hereditary;[6] the nobles can scarcely remain moderate. If they are few in number, their power is greater, but their security diminishes; if they are greater in number, their power is less and their security greater; so that power

[6] The aristocracy changes into an oligarchy.

keeps increasing and security diminishing up to the despot in whose person lies the extreme of power and danger.

Therefore, a large number of nobles in an hereditary aristocracy will make the government less violent; but as there will be little virtue there, one will fall into a spirit of nonchalance, laziness, and abandon, which will make a state with neither force nor spring.[7]

An aristocracy can sustain the force of its principle if the laws are such that they make the nobles feel more strongly the perils and fatigues of command than its delights, and if the state is in such a situation that it has something to dread, and if security comes from within and uncertainty from without.

A certain kind of confidence is the glory and security of a monarchy, but, by contrast, a republic must dread something.[8] Fear of the Persians maintained the laws among the Greeks. Carthage and Rome intimidated one another and were mutually strengthened. How singular! The more secure these states are, the more, as with tranquil waters, they are subject to corruption.

[7]Venice is one of the republics which has best corrected, by its laws, the drawbacks of hereditary aristocracy.

[8]Justin attributes the extinction of virtue in Athens to the death of Epaminondas. No longer rivalrous, the Athenians spent their income on festivals, "more frequently in attendance at the table [theater is the reading in modern texts] than at the camp" [L.]. Then the Macedonians came out of obscurity. [Justin, *Epitoma historiarum Philippicarum*], bk. 6 [6.9.4].

CHAPTER 6

On the corruption of the principle of monarchy

Just as democracies are ruined when the people strip the senate, the magistrates, and the judges of their functions, monarchies are corrupted when one gradually removes the prerogatives of the established bodies[b] or the privileges of the towns. In the first case, one approaches the despotism of all; in the other, the despotism of one alone.

"What ruined the dynasties of Tsin and Sui," says a Chinese author, "is that the princes, instead of limiting themselves like the ancients to a general inspection, which is the only one worthy of a sovereign, wanted

[b]*prérogatives des corps.*

to govern everything by themselves without an intermediary."[9] Here the Chinese author gives us the cause for the corruption of almost all monarchies.

A monarchy is ruined when a prince believes he shows his power more by changing the order of things than by following it, when he removes the functions that are natural to some to give them arbitrarily to others, and when he is more enamoured of what he fancies than of what he wills.

A monarchy is ruined when the prince, referring everything to himself exclusively, reduces the state to its capital, the capital to the court, and the court to his person alone.

Finally, it is ruined when a prince misunderstands his authority, his situation, and his people's love, and when he does not realize that a monarch should consider himself secure, just as a despot should believe himself imperiled.

[9]"Compilation of works done under the Ming," reported by Father [Jean Baptiste] du Halde [*Description de l'Empire de la Chine* 2, 781 H; 2, 648 P].

CHAPTER 7

Continuation of the same subject

The principle of monarchy has been corrupted when the highest dignities are the marks of the greatest servitude, when one divests the important men of the people's respect and makes them into vile instruments of arbitrary power.

It has been corrupted even more when honor has been set in opposition to honors and when one can be covered at the same time with infamy[10] and with dignities.

It has been corrupted when the prince changes his justice into

[10]Under the reign of Tiberius statues were raised and the triumphal ornaments were given to informers, which so degraded these honors that those who had deserved them scorned them. Fragment of [Cass.] Dio [*Historia Romana*], bk. 58 [58.4.8], drawn from the *Extracts of Virtues and Vices* of Constantine Porphyrogenitus. See in Tacitus how Nero, on the discovery and punishment of a supposed conspiracy, gave Petronius Turpilianus, Nerva, and Tigellinus triumphal ornaments. [Tacitus] *Annales*, bk. 14 [15.72]. See also how the generals scorned to wage war because they despised the honors. "The distinction of the triumph having been debased" [L.]. Tacitus, *Annales*, bk. 13 [13.53].

severity, when he puts a Medusa's head on his breast[11] as did the Roman emperors, and when he takes on that menacing and terrible air which Commodus required in his statues.[12]

The principle of monarchy has been corrupted when some singularly cowardly souls grow vain from the greatness of their servitude and when they believe that what makes them owe everything to the prince makes them owe nothing to their homeland.

But, if it is true (as has been seen through the ages) that insofar as the monarch's power becomes immense, his security diminishes, is it not a crime of high treason against him to corrupt this power to the extent of changing its nature?

[11] In this state the prince well knew what the principle of his government was.
[12] Herodianus [*Ab excessu divi Marci* 1.14.9].

CHAPTER 8

A danger of the corruption of the principle of monarchical government

It is not a drawback when the state passes from moderate government to moderate government, as from republic to monarchy or from monarchy to republic, but rather when it falls and collapses from moderate government into despotism.

Most European peoples are still governed by mores. But if, by a long abuse of power or by a great conquest, despotism became established at a certain time, neither mores nor climate would hold firm, and in this fine part of the world, human nature would suffer, at least for a while, the insults heaped upon it in the other three.

CHAPTER 9

How much the nobility is inclined to defend the throne

The English nobility was buried with Charles I in the debris of the throne; and before that, when Philip II sounded the name of liberty in French ears, the crown had always been sustained by that nobility

which holds it an honor to obey a king but regards it as the sovereign infamy to share power with the people.

The house of Austria tried persistently to oppress the Hungarian nobility. It did not know how much it would one day prize that nobility. It sought among these peoples silver they did not have; it did not see the men who were there. When the many princes had divided the states of the Hungarian monarchy among themselves, all its pieces fell, so to speak, one on top of the other, immobile and inactive: the only life that then remained was in the nobility, which grew indignant, forgot everything in order to fight, and believed that its glory lay in dying and in forgiving.

CHAPTER 10

On the corruption of the principle of despotic government

The principle of despotic government is endlessly corrupted because it is corrupt by its nature. Other governments are destroyed because particular accidents violate their principle; this one is destroyed by its internal vice if accidental causes do not prevent its principle from becoming corrupt. Therefore, it can maintain itself only when circumstances, which arise from the climate, the religion, and the situation or the genius of the people, force it to follow some order and to suffer some rule. These things force its nature without changing it; its ferocity remains; it is, for a while, tractable.

CHAPTER 11

Natural effects of the goodness and of the corruption of the principles

Once the principles of the government are corrupted, the best laws become bad and turn against the state; when their principles are sound, bad laws have the effect of good ones; the force of the principle pulls everything along.

The Cretans, in order to keep the highest magistrates dependent on the laws, used a very singular means: that of *insurrection*. Part of the

citizenry would rise up,[13] put the magistrates to flight, and oblige them to return to private life. This was supposedly done in pursuance of the law. Such an institution, which established sedition in order to prevent the abuse of power, seemed bound to overthrow any republic at all. It did not destroy that of Crete: here is why.[14]

When the ancients wanted to speak of a people who had the greatest love of the homeland, they cited the Cretans. *The homeland, a tender name among the Cretans*, said Plato.[15] They called it by a name that expresses a mother's love for her children.[16] Now, love of the homeland corrects everything.[c]

The laws of Poland have also their *insurrection*. But the drawbacks that result from it show clearly that only the people of Crete were in a state to use such a remedy successfully.

The gymnastic exercises established among the Greeks depended no less on the goodness of the principle of government. "The Lacedaemonians and the Cretans," said Plato,[17] "opened those famous academies that gave them such a distinguished rank in the world. At first modesty was alarmed, but it yielded to public usefulness." In Plato's time, these institutions were remarkable;[18] they were related to a great purpose, the military art. But when the Greeks were no longer virtuous, these institutions destroyed the military art itself; one no longer went down to the wrestling arena to be trained but to be corrupted.[19]

Plutarch tells us[20] that, in his time, the Romans thought these games were the principal cause of the servitude into which the Greeks had

[13] Aristotle, *Pol.*, bk. 2, chap. 10 [1272b1–15].

[14] One always united first against the enemies from the outside; this was called *syncretism*. Plutarch, *Moralia*, p. 88 [*De fraterno amore* 490b].

[15] [Plato] *Republic*, bk. 9 [575d].

[16] Plutarch, *Moralia*, in the treatise *An seni respublica gerenda sit* [792e].

[17] [Plato] *Republic*, bk. 5 [452c–d].

[18] Gymnastic was divided into two parts, dancing and wrestling. In Crete there were the armed dances of the Curettes; in Lacedaemonia, those of Castor and Pollux; in Athens, the armed dances of Pallas, quite proper for those who are not yet of an age to go to war. Wrestling is the image of war, says Plato, *Laws*, bk. 7 [814d; see also 795e–796d]. He praises in antiquity the establishment of only two dances, the pacific and the pyrrhic. See how the latter dance was applied to the military art. Plato, ibid. [*Laws* 814d–816d].

[19] ". . . Or the lustful wrestling arenas of the Lacedaemonians who are beloved of Leda" [L.]. Martial [*Epigrammaton*], bk. 4, epig. 55 [4.55.6–7].

[20] [Plutarch] *Moralia*, in the treatise *Quaestiones Romanae* [bk. 2, ques. 40, 274d–e].

[c] These observations are reinforced by the fact that the word *patrie*, "homeland," is a feminine noun, and easily lends itself to personification as a mother.

fallen. On the contrary: it was the Greeks' servitude that had corrupted these exercises. In Plutarch's time,[21] the parks, where one fought naked, and the wrestling matches, made the young people cowardly, inclined them to an infamous love and made only dancers of them; but in Epaminondas' time, wrestling had brought victory to the Thebans at the battle of Leuctra.[22]

There are few laws that are not good when the state has not lost its principles; and, as Epicurus said, speaking of wealth, "It is not the drink that is spoiled, it is the jar."

[21] Plutarch, ibid. [*Moralia*, *Quaestiones Romanae*, bk. 2, ques. 40; 274d–e].

[22] Plutarch, *Moralia*, *Quaestionum convivialium*, bk. 2 [bk. 2, ques. 5; 639f–640a].

CHAPTER 12

Continuation of the same subject

In Rome, judges were taken from the order of senators. The Gracchi transferred this prerogative to the knights. Drusus gave it to both senators and knights; Sulla, to senators alone; Cotta, to senators, knights, and public treasurers. Caesar excluded these last. Antony made decurions of senators, knights, and centurions.

When a republic has been corrupted, none of the ills that arise can be remedied except by removing the corruption and recalling the principles; every other correction is either useless or a new ill. So long as Rome preserved its principles, judgments could be in the hands of the senators without suffering abuse; but when it had been corrupted, regardless of the body to which judgments were transferred, whether to senators, knights, or public treasurers, or to two of these bodies, to all three together, or to any other body at all, the result was always bad. Knights had no more virtue than senators, public treasurers no more than knights, and the latter as little as centurions.

When the Roman people had secured their participation in the patrician magistracies, it was natural to think that their flatterers would be the arbiters of the government. No: one saw these people, who had opened the common magistracies to plebeians, always elect patricians. Because the people were virtuous, they were magnanimous; because they were free, they scorned power. But when they had lost their principles, the more power they had, the less carefully they managed it,

until finally, having become their own tyrant and their own slave, they lost the strength of liberty and fell into the weakness of license.

CHAPTER 13

The effect of the oath on a virtuous people

There has never been a people, says Livy,[23] to whom dissoluteness came later than to the Romans and among whom moderation and poverty were honored longer.

The *oath* had so much force among these people that nothing attached them more to the laws. In order to observe an oath, they often did what they would never have done for glory or for the homeland.

When the consul Quinctius Cincinnatus wanted to raise an army against the Aequi and the Volscians, the tribunes objected. "All right, then," he said, "let all those who swore their oath to the consul last year march under my banner."[24] In vain the tribunes cried out that no one was still bound by that oath and that when it had been sworn, Quinctius was a private citizen: the people were more religious than those who attempted to guide them; the people would not listen to the distinctions and interpretations of the tribunes.

When these same people wanted to withdraw to the Mons Sacer, they felt restrained by the oath they had sworn to follow the consuls to war.[25] They formed the design of killing the consuls; they were made to understand that the oath would none the less continue to exist. One can judge their idea of the violation of an oath by the crime they wanted to commit.

After the battle of Cannae, the people were frightened and wanted to withdraw to Sicily; Scipio made them swear they would remain in Rome; the fear of breaking their oath overcame every other fear. Rome in the storm was a vessel held by two anchors: religion and mores.

[23] [Livy] bk. 1 [Preface; 11].
[24] Livy, bk. 3 [3.20.4].
[25] Livy, bk. 2 [2.32.1–2].

CHAPTER 14

How the slightest change in the constitution entails the ruin of the principles

Aristotle speaks to us of the republic of Carthage as a well-regulated republic. Polybius tells us that during the Second Punic War,[26] the trouble in Carthage was that the senate had lost almost all its authority. Livy teaches us that when Hannibal returned to Carthage, he found the magistrates and principal citizens turning the public revenues to their own profit and abusing their power. Therefore, the virtue of the magistrates fell along with the authority of the senate; everything flowed from the same principle.

The prodigious results of the censorship among the Romans are well known. At one time it became oppressive but was kept up because there was more luxury than corruption. Clodius weakened it; by that weakening, corruption became even greater than luxury; and the censorship[27] abolished itself, so to speak. Having been altered, demanded, resumed, and abandoned, it was entirely suspended until it became useless, I mean during the reigns of Augustus and Claudius.

[26] About a hundred years later [Polybius, *Historia* 6.51].
[27] See [Cass.] Dio [*Historia Romana*], bk. 38 [38.13.2]; Plutarch [*Vit.*], *Cicero* [29–30.2; 34.1–2]; Cicero, *Epistolae ad Atticum*, bk. 4, letters 10 and 15 [4.9 and 16]; [Pseudo] Asconius [Pedianus], *Scholia Sangallensis Ciceronis*, *In Divinationem* [3.8; 2.189; see also Freinsheim, *Supplementorum Livianorum*, 103.109].

CHAPTER 15

Some very effective means of preserving the three principles

I shall be able to be understood only when the next four chapters have been read.

CHAPTER 16

Distinctive properties of the republic

It is in the nature of a republic to have only a small territory; otherwise, it can scarcely continue to exist. In a large republic, there are large fortunes, and consequently little moderation in spirits: the depositories are too large to put in the hands of a citizen; interests become particularized; at first a man feels he can be happy, great, and glorious without his homeland; and soon, that he can be great only on the ruins of his homeland.

In a large republic, the common good is sacrificed to a thousand considerations; it is subordinated to exceptions; it depends upon accidents. In a small one, the public good is better felt, better known, lies nearer to each citizen; abuses are less extensive there and consequently less protected.

What made Lacedaemonia last so long is that, after all its wars, it always remained within its territory. Lacedaemonia's only goal was liberty; the only advantage of its liberty was glory.

It was in the spirit of the Greek republics for them to be as satisfied with their lands as they were with their laws. Athens was seized with ambition and transmitted it to Lacedaemonia; but this was in order to command free peoples rather than to govern slaves; to be at the head of the union rather than to shatter it. All was lost when a monarchy rose up, a government whose spirit tends more toward expansion.

It is difficult for any government other than the republican to continue to exist in a single town unless there are particular circumstances.[28] A prince of such a small state would naturally be inclined to oppression because he would have a great power and few ways to enjoy it or to make it respected; therefore he would trample his people greatly. Then again, such a prince would be easily oppressed by a foreign force or even by a domestic force; the people could come together and unite against him at any moment. Now, when the prince of a single town is driven from his town, the proceeding is finished; if he has several towns, it has just begun.

[28] As when a small sovereign maintains himself between two great states by their mutual jealousy; but he exists only precariously.

CHAPTER 17

Distinctive properties of monarchy

A monarchical state should be of a medium size. If it were small, it would form itself into a republic; if it were quite extensive, the principal men of the state, being great in themselves, away from the eyes of the prince, with their court outside of his court, and, moreover, secured by the laws and by the mores from hasty executions, could cease to obey; they would not fear a punishment that was so slow and so distant.

Thus, Charlemagne had scarcely founded his empire before it had to be divided, either because the governors of the provinces did not obey, or because they would obey better if the empire were divided into several kingdoms.

After Alexander's death, his empire was divided. How could those important men of Greece and Macedonia, who were once free or were at least leaders of conquering peoples then so scattered across that vast conquest, how could they have obeyed others?

After Attila's death, his empire was dissolved; the many kings who were no longer constrained could not take up their chains again.

In these cases, the quick establishment of unlimited power is the remedy which can prevent dissolution: a new misfortune after that of expansion!

Rivers run together into the sea; monarchies are lost in despotism.

CHAPTER 18

That the Spanish monarchy was a particular case

Let Spain not be cited as an example; rather, it proves what I say. In order to hold America, it did what despotism itself does not do; it destroyed the inhabitants. In order to preserve its colony Spain had to keep it dependent even for its subsistence.

Spain attempted despotism in the Low Countries, and, as soon as it had abandoned this attempt, it became more encumbered. On the one hand, the Walloons would not be governed by the Spaniards, and, on the other, the Spanish soldiers refused to obey the Walloon officers.[29]

[29] See [Jean] Le Clerc, *Histoire des Provinces-Unies des Pays-Bas* [e.g. 1, 81; 1737–1738 edn].

Spain maintained itself in Italy only by enriching Italy and ruining itself, for those who wanted to be rid of the king of Spain were nevertheless not in a humor to relinquish his money.

CHAPTER 19

Distinctive properties of despotic government

A large empire presupposes a despotic authority in the one who governs. Promptness of resolutions must make up for the distance of the places to which they are sent; fear must prevent negligence in the distant governor or magistrate; the law must be in a single person; and it must change constantly, like accidents, which always increase in proportion to the size of the state.

CHAPTER 20

Consequence of the preceding chapters

If the natural property of small states is to be governed as republics, that of medium-sized ones, to be subject to a monarch, and that of large empires to be dominated by a despot, it follows that, in order to preserve the principles of the established government, the state must be maintained at the size it already has and that it will change its spirit to the degree to which its boundaries are narrowed or extended.

CHAPTER 21

On the Chinese empire

Before completing this book, I shall answer an objection that may be raised about all I have said to this point.

Our missionaries speak of the vast empire of China as of an admirable government, in whose principle intermingle fear, honor, and

virtue. I would therefore have made an empty distinction in establishing the principles of the three governments.

I do not know how one can speak of honor among peoples who can be made to do nothing without beatings.[30]

Moreover, our men of commerce, far from giving us an idea of the same kind of virtue of which our missionaries speak, can rather be consulted about the banditry of the mandarins.[31] I also call to witness the great man, Lord Anson.

Besides, Father Parennin's letters on the proceeding that the emperor caused to be brought against the neophyte princes of the blood[32] who had displeased him show us a tyrannical plan consistently followed and affronts to human nature done as a matter of rule, that is, in cold blood.

We also have letters from M. de Mairan and the same Father Parennin concerning the government of China. After some very sensible questions and answers, the aura of the marvelous vanishes.

Could it not be that the missionaries were deceived by an appearance of order, that they were struck by that continuous exercise of the will of one alone by which they themselves are governed and which they so like to find in the courts of the kings of India? For, as they go there only to make great changes, it is easier for them to convince princes that they can do everything than to persuade the peoples that they can suffer everything.[33]

Finally, there is often something true even in errors. Particular and perhaps unique circumstances may make it so that the Chinese government is not as corrupt as it should be. In this country causes drawn mostly from the physical aspect, climate, have been able to force the moral causes and, in a way, to perform prodigies.

The climate of China is such that it prodigiously favors the reproduction of mankind. Women there have such great fertility that

[30] The stick governs China, says Father [Jean Baptiste] du Halde [*Description de l'Empire de la Chine*, "Des prisons"; 2, 156–157 H; 2, 132–133 P; 2, 226 L].

[31] See, among others, the relation of Lange [*Recueil de voyages au Nord*, "Journal du Sieur Lange continuant ses négotiations à la cour de la Chine, 1721–1722"; vol. 8; 1727 edn].

[32] Of the family of Sourniama, *Lettres édifiantes et curieuses*, 18 [Lettre du P. Parennin, Pékin, July 20, 1726; 18, 33–122; Pékin, August 24, 1726; 18, 248–311; 1728 edn].

[33] In Father [Jean Baptiste] du Halde, see how the missionaries used the authority of Kang-hi to silence the mandarins who always said that by the laws of the country a foreign form of worship could not be established in the empire. [Jean Baptiste du Halde, *Description de l'Empire de la Chine*, "De l'établissement et du progrès de la religion chrétienne," 3, 126–136 H; 3, 104–111 P.]

nothing like it is seen elsewhere on earth. The cruellest tyranny cannot check the progress of propagation. The prince cannot say, with the Pharaoh, *Let us oppress them wisely*. He would be reduced, rather, to formulating Nero's wish that mankind should have only one head. Despite tyranny, China, because of its climate, will always populate itself and will triumph over tyranny.

China, like all countries where rice is grown,[34] is subject to frequent famines. When the people are starving, they scatter to seek something to eat. Everywhere bands of three, four, or five robbers form: most are immediately wiped out; others grow and are also wiped out. But, in such a great number of distant provinces, a group may meet with success. It maintains itself, grows stronger, forms itself into an army, goes straight to the capital, and its leader comes to the throne.

The nature of the thing is such that bad government there is immediately punished. Disorder is born suddenly when this prodigious number of people lacks subsistence. What makes it so hard to recover from abuses in other countries is that the effects are not felt; the prince is not alerted as promptly and strikingly as in China.

He will not feel, as our princes do, that if he governs badly, he will be less happy in the next life, less powerful and less rich in this one; he will know that, if his government is not good, he will lose his empire and his life.

As the Chinese people become ever more numerous despite exposing their children,[35] they must work tirelessly to make the lands produce enough to feed themselves; this demands great attention on the part of the government. It is in its interest for everyone at every moment to be able to work without fear of being frustrated for his pains. This should be less a civil government than a domestic government.

This is what has produced the rules that are so much discussed. Some have wanted to have laws reign along with despotism, but whatever is joined to despotism no longer has force. This despotism, beset by its misfortunes, has wanted in vain to curb itself; it arms itself with its chains and becomes yet more terrible.

Therefore, China is a despotic state whose principle is fear. In the first dynasties, when the empire was not so extensive, perhaps the government deviated a little from that spirit. But that is not so today.

[34] See bk. 23, chap. 14, below.

[35] See the memoir of one Tsongtu, *Lettres édifiantes et curieuses*, 21 "Expédients pour faire défricher les terres incultes" [22.210–223; 1736 edn].

The Spirit of Laws

Part 2

BOOK 9

On the laws in their relation with defensive force

CHAPTER I

How republics provide for their security

If a republic is small, it is destroyed by a foreign force; if it is large, it is destroyed by an internal vice.

This dual drawback taints democracies and aristocracies equally, whether they are good or whether they are bad. The ill is in the thing itself; there is no form that can remedy it.

Thus, it is very likely that ultimately men would have been obliged to live forever under the government of one alone if they had not devised a kind of constitution that has all the internal advantages of republican government and the external force of monarchy. I speak of the federal republic.

This form of government is an agreement by which many political bodies consent to become citizens of the larger state that they want to form. It is a society of societies that make a new one, which can be enlarged by new associates that unite with it.

Such associations made Greece flourish for so long. By using them, the Romans attacked the universe, and with their use alone, the universe defended itself from the Romans; and when Rome had reached its greatest height, the barbarians were able to resist it by associations made beyond the Danube and the Rhine, associations made from fright.

Because of them, Holland,[1] Germany, and the Swiss leagues are regarded in Europe as eternal republics.

Associations of towns were more necessary formerly than they are today. A city without power risked greater perils. Conquest made it lose

[1] It is formed of about fifty republics, all of them different from one another. [François Michel] Janiçon, *Etat présent de la République des Provinces-Unies* [I, 76; 1729 edn].

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not only executive and legislative power, as today, but also all property among men.[2]

This sort of republic, able to resist external force, can be maintained at its size without internal corruption: the form of this society curbs every drawback.

One who might want to usurp could scarcely have equal credit in all the confederated states. If he became too strong in one state, he would alarm all the others; if he subjugated a part, the part still free could resist him with forces independent of those he had usurped and overwhelm him before he had completely established himself.

If a sedition occurs in one of the members of the confederation, the others can pacify it. If some abuses are introduced somewhere, they are corrected by the healthy parts. This state can perish in one place without perishing in another; the confederation can be dissolved and the confederates remain sovereign.

Composed of small republics, it enjoys the goodness of the internal government of each one; and, with regard to the exterior, it has, by the force of the association, all the advantages of large monarchies.

[2]Civil liberty, goods, women, children, temples, and even sepulchers.

CHAPTER 2

That the federal constitution should be composed of states of the same nature, above all of republican states

The Canaanites were destroyed because they were small monarchies that had not confederated and did not have a common defense. This is because it is not in the nature of small monarchies to confederate.

The federal republic of Germany is composed of free towns and small states subject to princes. Experience shows that it is more imperfect than the federal republics of Holland and Switzerland.

The spirit of monarchy is war and expansion; the spirit of republics is peace and moderation. The only way these two sorts of governments can continue to exist together in one federal republic is by force.

Thus we see in Roman history that when the Veientes chose a king, all the small republics of Tuscany abandoned them. In Greece all

was lost when the Macedonian kings gained a place among the Amphictiones.

The federal republic of Germany, composed of princes and free towns, continues to exist because it has a leader who is, in a way, the magistrate of the union and, in a way, the monarch.

CHAPTER 3

Other things required in the federal republic

In the republic of Holland, one province cannot make an alliance without the consent of the others. This law is good and even necessary in the federal republic. It is missing from the German constitution, where it would curb the misfortunes that can come to all the members from the imprudence, ambition, or avarice of one alone. A republic united in a political confederation has given itself entirely and has nothing more to give.

It is unlikely that the states that associate will be of the same size and have equal power. The republic of the Lycians[3] was an association of twenty-three towns; the large ones had three votes in the common council; the medium-sized ones, two; the small ones, one. The republic of Holland is composed of seven provinces, large and small, each having one vote.

The towns of Lycia[4] paid the costs in proportion to their votes. The provinces of Holland cannot follow this proportion; they must follow that of their power.

In Lycia,[5] the judges and magistrates of the towns were elected by the common council in the proportion that we have said. In the republic of Holland, they are not elected by the common council, and each town names its magistrates. If one had to propose a model of a fine federal republic, I would choose the republic of Lycia.

[3]Strabo [*Geographica*], bk. 14 [14.3.3].
[4]Ibid. [Strabo, *Geographica*, 14.3.3].
[5]Strabo [*Geographica*], bk. 14 [14.3.3].

CHAPTER 4

How despotic states provide for their security

Just as republics unite to provide for their security, despotic states separate and hold themselves, so to speak, apart. They sacrifice a part of the country, ravage the frontiers, and leave them deserted; the main part of the empire becomes inaccessible.

It is accepted in geometry that the larger a body, the smaller, relatively, its circumference. Therefore, this practice of laying waste the frontiers is more tolerable in large states than in medium-sized ones.

This state does to itself all the ill that could be done by a cruel enemy, but an enemy that could not be checked.

The despotic state preserves itself by another kind of separation, by which the distant provinces are put in the hands of a feudatory prince. The Moguls, the Persians, and the emperors of China have their feudatory princes; and the Turks are very well off for having put the Tartars, the Moldavians, the Walachians, and formerly the Transylvanians between their enemies and themselves.

CHAPTER 5

How monarchy provides for its security

Monarchy does not destroy itself as does the despotic state; but a state of medium size may quickly be invaded. Therefore, it has strongholds that protect its frontiers and armies that defend these strongholds. There one disputes artfully, courageously, and opinionatedly over the smallest area. Despotic states make invasions; only monarchies make war.

Strongholds belong to monarchies; despotic states are afraid to have them. They dare not entrust them to anyone; for no one there loves the state or the prince.

CHAPTER 6

On the defensive force of states in general

For a state to be at its full force, its size must be such that there is a relation between the speed with which one can execute an undertaking against it and its promptness in rendering this ineffective. As the one who attacks can suddenly appear everywhere, the one who defends must also be able to appear everywhere; consequently, the state must be of a medium extent so as to be proportionate to the degree of speed nature has given men to move from one place to another.

France and Spain are precisely the requisite size. Their forces communicate so well that they go immediately where they are wanted; the armies join together and go rapidly from one frontier to the other; and one fears none of the things that need a certain amount of time for their execution.

It is remarkably fortunate for France that its capital is closer to the different frontiers in proportion to their greater weakness; and the prince here sees each part of his country the better as it is the more exposed.

But when a vast state, such as Persia, is attacked, several months must pass before the dispersed troops can assemble, and there can be no forced march for this length of time, as there can be for two weeks. If the army on the frontier is beaten, it will surely disperse because its places of retreat are not nearby; the victorious army, finding no resistance, advances by long daily marches, appears at the capital, and besieges it, when the governors of the provinces have just been alerted to send help. Those who judge the revolution at hand hasten it by not obeying. For people, faithful only because punishment is at hand, are no longer faithful when it is distant; they work for their own particular interests. The empire dissolves, the capital is taken, and the conqueror disputes the provinces with the governors.

The true power of a prince consists not so much in the ease he has in conquering as in the difficulty there is in attacking him, and, if I dare put it this way, in the immutability of his condition. But the expansion of states makes them expose new sides from which they can be taken.

Thus, just as monarchs should be wise in increasing their power, they should be no less prudent in limiting it. While they put an end to

the drawbacks of being small, they must always have an eye out for the drawbacks of being large.

CHAPTER 7

Reflections

The enemies of a great prince who has long reigned have accused him a thousand times, more from fears than from reasons, I believe, of having formed and pursued the project of universal monarchy.[a] If he had succeeded in it nothing would have been more fatal to Europe, to his first subjects, to himself, and to his family. Heaven, which knows the true advantages, has better served him by defeats than it would have by victories. Instead of making him the only king in Europe, it has favored him more by making him the most powerful of all.

The people of his nation, who, in foreign countries, are affected only by that which they have left behind, who, on leaving their home, regard glory as the sovereign good, and in distant countries, as an obstacle to their return, who antagonize even by their good qualities because they seem to join scorn to them, who can bear wounds, perils, or exhaustion, but not the loss of their pleasures, who love nothing so much as their gaiety and are consoled for the loss of a battle by singing of their general, would never have completed such an undertaking, which cannot fail in one country without failing in all others, or fail for a moment without failing forever.

[a] This prince was Louis XIV.

CHAPTER 8

A case where the defensive force of a state is inferior to its offensive force

The comment of Sir De Coucy to King Charles V was that "the English are never so weak or so easy to defeat as at home." This is what was said of the Romans; this is what the Carthaginians experienced; it is what will happen to any power that has sent its armies far away in

order to bring together by force of discipline and of military power those who are divided among themselves by political or civil interests. The state is weak because of the ill that remains and has been further weakened by the remedy.

The maxim of Sir De Coucy is an exception to the general rule by which one is never to undertake distant wars. And this exception indeed proves the rule, because it applies only to those who have themselves broken the rule.

CHAPTER 9

On the relative force of states

All size, all force, all power is relative. One must take care that in seeking to increase real size, one does not diminish relative size.

Toward the middle of the reign of Louis XIV, France was at the highest point of its relative size. Germany did not yet have the great monarchs it has since had. Italy was in the same situation. Scotland and England had not formed a monarchy. Aragon had not formed one with Castile; and the separate parts of Spain were weakened by this and weakened Spain. Muscovy was as yet no better known in Europe than was the Crimea.

CHAPTER 10

On the weakness of neighboring states

When a neighboring state is in its decline, one should take care not to hasten its ruin, because this is the most fortunate situation possible; there is nothing more suitable for a prince than to be close to another who receives in his stead all the blows and outrages of fortune. By conquering such a state, one rarely increases as much in real power as one loses in relative power.

BOOK 10

On laws in their relation with offensive force

CHAPTER 1

On offensive force

Offensive force is regulated by the right of nations, which is the political law of the nations considered in their relation with each other.

CHAPTER 2

On war

The life of states is like that of men. Men have the right to kill in the case of natural defense; states have the right to wage war for their own preservation.

In the case of natural defense, I have the right to kill, because my life is mine, as the life of the one who attacks me is his; likewise a state wages war because its preservation is just, as is any other preservation.

Among citizens, the right to natural defense does not carry with it a necessity to attack. Instead of attacking they have the recourse of the tribunals. Therefore, they can exercise that right of defense only in cases that occur so suddenly that one would be lost if one waited for the aid of the laws. But among societies, the right of natural defense sometimes carries with it a necessity to attack, when one people sees that a longer peace would put another people in a position to destroy it and that an attack at this moment is the only way to prevent such destruction.

Hence small societies more frequently have the right to wage wars than large ones, because they are more frequently in a position to fear being destroyed.

Therefore, the right of war derives from necessity and from a strict justice. If those who direct the conscience or the councils of princes do not hold to these, all is lost; and, when that right is based on arbitrary principles of glory, of propriety, of utility, tides of blood will inundate the earth.

Above all, let one not speak of the prince's glory; his glory is his arrogance; it is a passion and not a legitimate right.

It is true that his reputation for power could increase the forces of his state, but his reputation for justice would increase them in any case.

CHAPTER 3

On the right of conquest

From the right of war derives that of conquest, which is its consequence; therefore, it should follow the spirit of the former.

When a people is conquered, the right of the conqueror follows four sorts of laws: the law of nature, which makes everything tend toward the preservation of species; the law of natural enlightenment,[a] which wants us to do to others what we would want to have done to us; the law that forms political societies, which are such that nature has not limited their duration; lastly, the law drawn from the thing itself. Conquest is an acquisition; the spirit of acquisition carries with it the spirit of preservation and use, and not that of destruction.

One state that has conquered another treats it in one of these four ways: the state continues to govern its conquest according to its own laws and takes for itself only the exercise of the political and civil government; or it gives its conquest a new political and civil government; or it destroys the society and scatters it into others; or, finally, it exterminates all the citizens.

The first way conforms to the right of nations we follow at present; the fourth is more in conformity with the right of nations among the Romans; on this point, I leave others to judge how much better we have become. Here homage must be paid to our modern times, to contemporary reasoning, to the religion of the present day, to our philosophy, and to our mores.

[a] Montesquieu uses *lumières*, which we translate as "enlightenment"; it also implies insight or illumination.

When the authors of our public right, for whom ancient histories provided the foundation, have no longer followed cases strictly, they have fallen into great errors. They have moved toward the arbitrary; they have assumed among conquerors a right, I do not know which one, of killing; this has made them draw consequences as terrible as this principle and establish maxims that the conquerors themselves, when they had the slightest sense, never adopted. It is clear that, once the conquest is made, the conqueror no longer has the right to kill, because it is no longer for him a case of natural defense and of his own preservation.

What has made them think in this way is that they have believed the conqueror had the right to destroy the society; thus they have concluded that he had the right to destroy the men composing it, which is a consequence wrongly drawn from a wrong principle. For, from the annihilation of the society, it would not follow that the men forming that society should also be annihilated. The society is the union of men and not the men themselves; the citizen may perish and the man remain.

From the right to kill during conquest, political men have drawn the right to reduce to servitude, but the consequence is as ill founded as the principle.

One has the right to reduce a people to servitude only when it is necessary for the preservation of a conquest. The purpose of conquest is preservation; servitude is never the purpose of conquest, but it is sometimes a necessary means for achieving preservation.

In this case, it is against the nature of the thing for this servitude to be eternal. It must be possible for the enslaved people to become subjects. Slavery is accidental to conquest. When, after a certain length of time, all the parts of the conquering state are bound to those of the conquered state by customs, marriage, laws, associations, and a certain conformity of spirit, servitude should cease. For the rights of the conqueror are founded only on the fact that these things do not exist and that there is a distance between the two nations, such that the one cannot trust the other.

Thus, the conqueror who reduces a people to servitude should always reserve for himself means (and these means are innumerable) for allowing them to leave it.

I am not saying vague things here. Our fathers who conquered the Roman Empire acted in this way. They softened the laws that they made in the heat, impetuosity, and arrogance of victory; their laws had

been hard, they made them impartial. The Burgundians, the Goths, and the Lombards wanted the Romans to continue to be the vanquished people; the laws of Euric, of Gundobad, and of Rotharis made the barbarian and the Roman fellow citizens.[1b]

To subdue the Saxons, Charlemagne deprived them of their freeborn status and of the ownership of goods. Louis the Pious freed them;[2] he did nothing better during his reign. Time and servitude had softened their mores; they were forever faithful to him.

[1] See the law codes of the barbarians, and book 28 below.

[2] See the anonymous author ["Astronomous"] of the life of Louis the Pious in the Duchesne collection, vol. 2, p. 296 [*Vita Hludowici Imperatoris*, *MGH*, SS. 2; chap. 24, anno 814].

[b] See 28.5 for an elaboration of the personal law of the barbarians.

CHAPTER 4

Some advantages for the conquered peoples

Instead of drawing such fatal consequences from the right of conquest, political men would have done better to speak of the advantages this right can sometimes confer on a vanquished people. They would have been more sensitive to these advantages if our right of nations were followed exactly and if it were established around the earth.

Ordinarily states that are conquered do not have the force they had at their institution: corruption has entered them; their laws have ceased to be executed; the government has become an oppressor. Who can doubt that there would be gain for such a state and that it would draw other advantages from the conquest itself, if the conquest were not destructive? What would the government lose by being recast, if it had reached the point of being unable to reform itself? A conqueror who comes to a people among whom the rich, by a thousand ruses and a thousand tricks, have imperceptibly practiced an infinite number of usurpations; where the unfortunate man who trembles as he watches what he believed to be abuses become laws is oppressed and believes himself wrong to feel so; a conqueror, I say, can change the course of everything, and muffled tyranny is the first thing which is liable to violence.

For example, one has seen states whose oppression by tax-collectors was relieved by the conqueror, who had neither the engagements nor the needs of the legitimate prince. Abuses were corrected even without the conqueror's correcting them.

The frugality of the conquering nation has sometimes put it in a position to leave the vanquished people the necessities that had been taken from them under the legitimate prince.

A conquest can destroy harmful prejudices, and, if I dare speak in this way, can put a nation under a better presiding genius.

What good could the Spanish not have done the Mexicans? They had a gentle religion to give them; they brought them a raging superstition. They could have set the slaves free, and they made freemen slaves. They could have made clear to them that human sacrifice was an abuse; instead they exterminated them. I would never finish if I wanted to tell all the good things they did not do, and all the evil ones they did.

It is for the conqueror to make amends for part of the evils he has done. I define the right of conquest thus: a necessary, legitimate, and unfortunate right, which always leaves an immense debt to be discharged if human nature is to be repaid.

CHAPTER 5

Gelon, King of Syracuse

The finest peace treaty mentioned in history is, I believe, the one Gelon made with the Carthaginians. He wanted them to abolish the custom of sacrificing their children.[3] Remarkable thing! After defeating three hundred thousand Carthaginians, he exacted a condition useful only to them, or rather, he stipulated one for mankind.

The Bactrians had their elders eaten by large dogs; Alexander forbade them to do this,[4] and this was a triumph he gained over superstition.

[3] See the collection by [Jean] Barbeyrac [*Histoire des anciens traitez*], art. 112 [art. 113; 1739 edn].

[4] Strabo [*Geographica*], bk. 2 [11.11.3].

CHAPTER 6

On a republic that conquers

It is against the nature of the thing for one confederated state under a federal constitution to conquer another, as we have seen among the Swiss in our own time.[5] In mixed federal republics, with an association of small republics and small monarchies, such conquest is less shocking.

It is also against the nature of the thing for a democratic republic to conquer towns that could not enter the sphere of the democracy. As the Romans had established from the beginning, the conquered people must be able to enjoy the privileges of sovereignty. The limit to conquest should be the number of citizens fixed for the democracy.

If a democracy conquers a people in order to govern it as a subject, it will expose its own liberty, because it will entrust too much power to the magistrates whom it sends out to the conquered state.

What danger would not the republic of Carthage have run if Hannibal had taken Rome? Having caused so many revolutions in his own town after his defeat, what might he not have done there after that victory?[6]

Hanno could never have persuaded the senate not to send aid to Hannibal if he had let only his jealousy speak. That senate, which Aristotle tells us was very wise (something the prosperity of that republic proves very well),[c] could reach a decision only for sensible reasons. One would have had to be dull-witted not to see that an army three hundred leagues away had had necessary losses that had to be repaired.

Hanno's party wanted Hannibal to surrender to the Romans.[7] At that time, one could not have feared the Romans; therefore, one feared Hannibal.

Hannibal's successes, they say, could not be believed; but how could they be doubted? Were the Carthaginians, scattered around the earth,

[5] Of Tockenburg.

[6] He was at the head of a faction.

[7] Hanno wanted to surrender Hannibal to the Romans, as Cato wanted Caesar to be surrendered to the Gauls.

[c] Aristotle, *Politics* 1272b24–41.

unaware of what was happening in Italy? It was because they were aware of it that they did not want to send help to Hannibal.

Hanno became firmer after Trebia, after Trasimene, after Cannae; it is not their incredulity that grows, it is their fear.

CHAPTER 7

Continuation of the same subject

There is still another drawback to conquests made by democracies. Their kind of government is always odious to subject states. It is monarchical only by a fiction; but, in truth, it is harsher than monarchy, as the experience of all times and all countries has shown.

The conquered peoples are in a sad state; they enjoy the advantages neither of the republic nor of the monarchy.

What I have said of the popular state can be applied to aristocracy.

CHAPTER 8

Continuation of the same subject

Thus, when a republic holds a people dependent, it must seek to make amends for the drawbacks that arise from the nature of the thing by giving this people a good political right and good civil laws.

An Italian republic held certain islanders obedient to it, but its political and civil right in their regard was faulty. One recalls the act of amnesty[8] that stipulated that they would no longer be condemned to corporal penalties *on the privy knowledge of the governor.*[d] Peoples have often asked for privileges; here it is the sovereign who grants what is the right of all nations.

[8] Of October 18, 1738, printed at Genoa by Franchelli. "We forbid our Governor-general in this said Island [Corsica] to condemn to grievous punishment any person based solely on his own privy information [*ex informata conscientia*]. He will certainly be able to arrest and imprison such persons who are suspect, provided that he render to us a speedy account" [It.], art. 6. [This reference has not been verified.]

[d] The "corporal penalties" are *peines afflictives*, meaning imprisonment or death.

CHAPTER 9

On a monarchy that conquers its neighbors

If a monarchy can have an influence long before its expansion weakens it, it will become formidable; and its force wil last as long as neighboring monarchies continue to press it.

Therefore it should conquer only up to the limits natural to its government. Prudence wants it to check itself as soon as it exceeds these limits.

In this sort of conquest, things must be left as they were found: the same tribunals, the same laws, the same customs, the same privileges. Nothing should be changed but the army and the sovereign's name.

When the monarchy has extended its limits by the conquest of a few neighbouring provinces, it must treat them very gently.

In a monarchy that has worked long for conquest, the provinces of its first domain will ordinarily be badly trampled. They have to suffer both the new abuses and the old ones, and often a vast capital that engulfs everything has decreased their population. Now if, after the conquest of the area around this domain, the vanquished peoples were treated as were the first subjects, the state would be lost; what the conquered provinces would send in tribute to the capital would no longer return to them; the frontiers would be ruined, and consequently weaker; the peoples would be badly affected by this; the sustenance of armies that were to remain there and have influence would be more precarious.

Such is the necessary state of a conquering monarchy: frightful luxury in the capital, poverty in the provinces at some distance from it, abundance at the farthest points. It is as it is with our planet: fire is in the center, greenery on the surface, and between them an arid, cold, and sterile land.

CHAPTER 10

On a monarchy that conquers another monarchy

Sometimes one monarchy conquers another. The smaller the latter is, the better it will be contained by strongholds; the larger, the better preserved by colonies.

CHAPTER 11

On the mores of the vanquished people

In these conquests, it is not enough to leave the vanquished nation its laws; it is perhaps more necessary to leave it its mores, because a people always knows, loves, and defends its mores better than its laws.

The French were driven out of Italy nine times because, say the historians,[9] they were insolent to women and girls. It is too much for a nation to have to suffer not only the conqueror's pride but also his incontinence; not only both these but also his indiscretion, probably the more trying because it multiplies outrages to infinity.

[9]See [Samuel] Pufendorf, *Introduction à l'histoire générale et politique de l'univers* [see, for example, p. 358; 1700 Latin edn; bk. 1, chap. 4; 1, 343; 1743 Fr. edn].

CHAPTER 12

On a law of Cyrus

I do not consider good the law that Cyrus made: that the Lydians could exercise none but vile or infamous professions. One attends to the most urgent; one thinks of rebellions and not invasions. But invasions will soon come; the two peoples unite; they corrupt each other. I should prefer that the laws maintained the roughness of the victorious people than that they kept up the softness of the vanquished people.

Aristodemus, tyrant of Cumae,[10] sought to weaken the courage of the youth. He wanted the boys to let their hair grow long like a girl's, dressing it with flowers, and to wear variously colored robes down to their heels; to have women bring them their parasols, perfumes, and fans when they went to their dancing masters and their music masters; in the bath women gave them their combs and mirrors. This education lasted until the age of twenty. This is suitable only for a petty tyrant, who risks his sovereignty in order to defend his life.

[10]Dion. Hal. [*Ant. Rom.*], bk. 7 [7.9.3–5].

CHAPTER 13

Charles XII

This prince, who used only his own forces, brought on his fall by forming designs that could be executed only by a long war, one which his kingdom could not support.

It was not a state in its decline that he attempted to overthrow, but a rising empire. The war this prince waged against the Muscovites served them as a school. After each defeat, they came closer to victory; and, while losing abroad, they learned to defend themselves at home.

Charles believed himself master of the world in the uninhabited regions of Poland where he roamed and in which Sweden was spread out, as it were, while his principal enemy strengthened itself against him, surrounded him, established itself on the Baltic Sea, and destroyed or captured Livonia.

Sweden was like a river whose waters were cut off at the source while its course was being deflected.

It was not Poltava that ruined Charles; if he had not been destroyed at that place, he would have been destroyed at another. Accidents of fortune are easily rectified; one cannot avert events that continuously arise from the nature of things.[c]

But neither nature nor fortune was ever as strong against him as he himself.

He was not ruled by the actual arrangement of things, but rather by a certain model he had chosen; even this he followed badly. He was not Alexander but he would have been Alexander's best soldier.

Alexander's project succeeded only because it was sensible. The unfavorable results of the Persians' invasions of Greece, the conquests of Agesilaus and the retreat of the Ten Thousand had made known just how superior the Greek manner of doing battle and their sort of weapons were; and it was well known that the Persians were too great to correct themselves.

They could no longer weaken Greece by dividing it; it was then united under a leader for whom there was no better means of hiding its

[c]In 1757 the beginning of this clause was changed from *mais comment parer* to *on ne peut pas parer*. Although in the Masson edition the punctuation has not been changed from a question-mark to a period, we have changed it in the translation.

servitude from it than to dazzle it by the destruction of its eternal enemies and by the expectation of conquering Asia.

As the empire was cultivated by a nation of the most industrious people in the world who plowed their lands on account of religious principle, a nation fertile and abundant in all things, it was very easy for an enemy to subsist there.

By the arrogance of these kings, always humbled in vain by their defeats, one might judge that they would hasten their downfall by always giving battle and that flattery would never allow them to doubt of their greatness.

And not only was the project wise, but it was wisely executed. Alexander, in the rapidity of his actions, even in the heat of his passions, was led by a vein of reason, if I dare use the term, and those who have wanted to make a romance of his story, those whose spirit was more spoiled than his, have been unable to hide it from us. Let us speak about him at length.

CHAPTER 14

Alexander

He left Greece only after securing Macedonia from the neighboring barbarian peoples and completely oppressing the Greeks; he used this oppression only for the execution of his enterprise; he rendered the Lacedaemonians' jealousy powerless; he attacked the maritime provinces; he made his army follow the seashore in order not to be separated from his fleet; he used discipline remarkably well against numbers; he did not lack provisions; and if it is true that victory gave him everything, he also did everything in order to gain victory.

In the beginning of his enterprise, that is, at a time when a defeat could have set him back, he left little to chance; when fortune set him above events, temerity was sometimes one of his means. When he marches against the Triballians and Illyrians before his departure, you see a war like the one Caesar later waged in Gaul.[11] On his way to Greece,[12] it is almost in spite of himself that he captures and destroys

[11] See Arrian, *Anabasis*, bk. 1 [1.1.4–1.4.8].
[12] Ibid. [Arrian, *Anabasis* 1.7–8.]

Thebes; camped near their city, he waits until the Thebans want to make peace; they themselves hasten their ruin. When it is a question of battling the naval forces of the Persians,[13] Parmenion is the more audacious, but Alexander is the wiser. By his industry he maneuvered the Persians away from the seashore and reduced them to abandoning their navy, which was superior. In principle, Tyre was attached to the Persians, who could not do without its commerce and its navy; Alexander destroyed it. He took Egypt, which Darius had left stripped of troops while he was collecting innumerable armies in another universe.

Alexander owed his mastery of the Greek colonies to the crossing of the Granicus; the battle of Issus gave him Tyre and Egypt; the battle of Arbela gave him the whole earth.

After the battle of Issus, he lets Darius flee and concerns himself only with consolidating and ruling his conquests; after the battle of Arbela, he follows Darius so closely[14] that he leaves him no retreat in his empire. Darius enters his towns and provinces only to leave again; Alexander's marches are so rapid that you believe that empire of the universe is the prize for running, as in the Greek games, rather than the prize for victory.

It is thus that he made his conquests; let us see how he preserved them.

He resisted those who wanted him to treat[15] the Greeks as masters and the Persians as slaves; he thought only of uniting the two nations and wiping out the distinctions between the conquerors and the vanquished: after the conquest, he abandoned all the prejudices that had served him in making it; he assumed the mores of the Persians in order not to distress the Persians by making them assume the mores of the Greeks; this is why he showed so much respect for the wife and the mother of Darius and why he was so continent. Who is this conqueror who is mourned by all the peoples he subjected? Who is this usurper whose death moved to tears the family he had removed from the throne? This aspect of his life, historians tell us, can be claimed by no other conqueror.

Nothing strengthens a conquest more than unions by marriage

[13] Ibid. [Arrian, *Anabasis* 1.18.6–9.]
[14] Ibid. [Arrian, *Anabasis*], bk. 3 [3.19–21].
[15] This was Aristotle's counsel. Plutarch, *Moralia*, *De Alexandri Magni fortuna aut virtute* [1.6; 329b–d].

between two peoples. Alexander took wives from the nation he had vanquished; he wanted the men of his court[16] to do likewise; the rest of the Macedonians followed his example. The Franks and the Burgundians[17] allowed these marriages; in Spain the Visigoths forbade[18] them and later permitted them; the Lombards not only permitted them but even fostered them;[19] when the Romans wanted to weaken Macedonia, they established there that no unions by marriage could be made between the peoples of one province and another.

Alexander, who sought to unite the two peoples, thought of making a large number of Greek colonies in Persia; he built an infinite number of towns and cemented all the parts of this new empire so well that after his death, in the trouble and confusion of the most horrible civil wars, after the Greeks had annihilated themselves, so to speak, none of the Persian provinces rebelled.

In order not to drain Greece and Macedonia, he sent a colony of Jews to Alexandria;[20] it was unimportant to him what mores these peoples had, provided they were faithful to him.

He left to the vanquished peoples not only their mores but also their civil laws and often even the kings and governors he had found there. He put the Macedonians[21] at the head of the troops and people from the invaded country at the head of the government, preferring to run the risk of the unfaithfulness of some individuals (which occured a few times) to a general rebellion. He respected the old traditions and everything that recorded the glory or the vanity of these peoples. The kings of Persia had destroyed the temples of the Greeks, Babylonians, and Egyptians; he rebuilt them;[22] there were few nations at whose altars he did not sacrifice; it seemed he had conquered only to be the monarch of each nation and the first citizen of each town. The Romans conquered all in order to destroy all; he wanted to conquer all in order to preserve all, and in every country he entered, his first ideas, his first designs, were always to do something to increase its prosperity and

[16] See Arrian, *Anabasis*, bk. 7 [7.4.4–8].
[17] See the *Leges Burgundionum*, tit. 12, art. 5 [12.5].
[18] See the *Lex Wisigothorum*, bk. 3, tit. 5, para. 1 [3.1.1]. It abrogates the earlier law, which, it says, had more regard to the difference between nations than to that between conditions.
[19] See the *Leges Langobardorum*, bk. 2, tit. 7, paras. 1 [Liut. 127] and 2 [Loth. 14 (pap)].
[20] The kings of Syria, abandoning the plan of the empire's founders, wanted to oblige the Jews to take on the mores of the Greeks, which jolted their state terribly.
[21] See Arrian, *Anabasis*, bk. 3 and elsewhere [for example, 3.5, 16] and others.
[22] Ibid. [Arrian, *Anabasis*, 3.16.4–5.]

power. He found the first ways for doing this in the greatness of his genius; the second, in his own frugality and his own economy;[23] the third, in his immense prodigality for great things. His hand was closed for private expenditures; it opened for public expenditures. Was it a question of regulating his household? He was a Macedonian. Was it a question of paying soldiers' debts, of letting the Greeks share in his conquest, of making the fortune of each man in his army? He was Alexander.

He did two things that were bad: he burned Persepolis and killed Clitus. He made them famous by his repentance, so that one forgot his criminal actions and remembered his respect for virtue, so that these actions were considered misfortunes rather than things proper to him, so that posterity finds the beauty of his soul at virtually the same time as his ravings and his weaknesses, so that one had to be sorry for him and it was no longer possible to hate him.

I shall compare him to Caesar: when Caesar wanted to imitate the kings of Asia, he drove the Romans to despair over a thing of pure ostentation; when Alexander wanted to imitate the kings of Asia, he did a thing that entered into the plan of his conquest.

[23] See Arrian, *Anabasis*, bk. 7 [7.9.9.]

CHAPTER 15

A new means for preserving the conquest

When a monarch conquers a large state, there is an admirable practice, equally proper for moderating despotism and for preserving the conquest; those who conquered China put it to use.

In order not to drive the vanquished people to despair and not to make the victor more arrogant, in order to keep the government from becoming military and to hold the two peoples to their duty, the Tartar family now reigning in China has established that each body of troops in the provinces would be composed half of Chinese and half of Tartars, so that the jealousy between the two nations will hold them to their duty. The tribunals are likewise half Chinese, half Tartar. This produces many good results: 1. the two nations constrain one another; 2. both keep military and civil power, and one is not wiped out by the

other; 3. the conquering nation can spread throughout without weakening and ruining itself; it becomes capable of resisting civil and foreign wars. This is such a sensible institution, that the absence of a like one has led to the ruin of almost all the conquerors on earth.

CHAPTER 16

On a despotic state that conquers

An immense conquest presupposes despotism. In this case, the army that is spread out in the provinces is insufficient. There must always be a specially trustworthy body around the prince, always ready to assail the part of the empire that may waver. This guard should constrain the others and make tremble all those to whom one has been obliged to leave some authority in the empire. Around the emperor of China, a massive body of Tartars always stands ready in case of need. Among the Moguls, among the Turks, and in Japan, there is a body in the prince's pay, independent of the one maintained by the revenue from the lands. These special forces keep the general ones respectful.

CHAPTER 17

Continuation of the same subject

We have said that the states conquered by the despotic monarch should be feudatory. Historians tire themselves praising the generosity of conquerors who have returned the crown to princes whom they have vanquished. Therefore, the Romans, who made kings everywhere in order to have instruments of servitude, were quite generous.[24] Such an action is a necessary act. If the conqueror keeps the conquered state, the governors he sends will not be able to constrain the subjects, nor will he, his governors. He will be obliged to strip his first patrimony of troops in order to safeguard the new one. All the misfortunes of the two states will be shared; the civil war of the one will be the civil war of the other. But if, on the contrary, the conqueror returns the throne to the

[24] "They considered even kings to be instruments of servitude" [L.] [Tacitus, *Agricola* 14].

legitimate prince, he will of necessity have an ally who, with his own forces, will increase those of the conqueror. We have recently seen Shah Nadir conquer the treasures of the Mogul and leave Hindustan to him.

BOOK 11

On the laws that form political liberty in its relation with the constitution

CHAPTER 1

General idea

I distinguish the laws that form political liberty in its relation with the constitution from those that form it in its relation with the citizen. The first are the subject of the present book; I shall discuss the second in the next book.

CHAPTER 2

The various significations given to the word liberty

No word has received more different significations and has struck minds in so many ways as has *liberty*. Some have taken it for the ease of removing the one to whom they had given tyrannical power; some, for the faculty of electing the one whom they were to obey; others, for the right to be armed and to be able to use violence; yet others, for the privilege of being governed only by a man of their own nation, or by their own laws.[1] For a certain people liberty has long been the usage of wearing a long beard.[2] Men have given this name to one form of government and have excluded the others. Those who had tasted republican government put it in this government; those who had enjoyed monarchical government placed it in monarchy.[3] In short, each

[1] Cicero [*Epistolae ad Atticum* 6.1.15] says, "I have copied Scaevola's edict, which permits the Greeks to end their differences among themselves according to their laws; this makes them regard themselves as free peoples."

[2] The Muscovites could not bear Czar Peter's order to cut them off.

[3] The Cappadocians refused the republican state the Romans offered them.

has given the name of *liberty* to the government that was consistent with his customs or his inclinations; and as, in a republic, one does not always have visible and so present the instruments of the ills of which one complains and as the very laws seem to speak more and the executors of the law to speak less, one ordinarily places liberty in republics and excludes it from monarchies. Finally, as in democracies the people seem very nearly to do what they want, liberty has been placed in this sort of government and the power of the people has been confused with the liberty of the people.

CHAPTER 3

What liberty is

It is true that in democracies the people seem to do what they want, but political liberty in no way consists in doing what one wants. In a state, that is, in a society where there are laws, liberty can consist only in having the power to do what one should want to do and in no way being constrained to do what one should not want to do.

One must put oneself in mind of what independence is and what liberty is. Liberty is the right to do everything the laws permit; and if one citizen could do what they forbid, he would no longer have liberty because the others would likewise have this same power.

CHAPTER 4

Continuation of the same subject

Democracy and aristocracy are not free states by their nature. Political liberty is found only in moderate governments. But it is not always in moderate states. It is present only when power is not abused, but it has eternally been observed that any man who has power is led to abuse it; he continues until he finds limits. Who would think it! Even virtue has need of limits.

So that one cannot abuse power, power must check power by the arrangement of things. A constitution can be such that no one will be

constrained to do the things the law does not oblige him to do or be kept from doing the things the law permits him to do.

CHAPTER 5

On the purpose of various states

Although all states have the same purpose in general, which is to maintain themselves, yet each state has a purpose that is peculiar to it. Expansion was the purpose of Rome; war, that of Lacedaemonia; religion, that of the Jewish laws; commerce, that of Marseilles; public tranquillity, that of the laws of China;[4] navigation, that of the laws of the Rhodians; natural liberty was the purpose of the police of the savages; in general, the delights of the prince are the purpose of the despotic states; his glory and that of his state, that of monarchies; the independence of each individual is the purpose of the laws of Poland, and what results from this is the oppression of all.[5]

There is also one nation in the world whose constitution has political liberty for its direct purpose. We are going to examine the principles on which this nation founds political liberty. If these principles are good, liberty will appear there as in a mirror.

Not much trouble need be taken to discover political liberty in the constitution. If it can be seen where it is, if it has been found, why seek it?

[4] The natural purpose of a state having no enemies on the outside or believing them checked by barriers.

[5] Drawback of the *liberum veto*.

CHAPTER 6

On the constitution of England

In each state there are three sorts of powers: legislative power, executive power over the things depending on the right of nations, and executive power over the things depending on civil right.

By the first, the prince or the magistrate makes laws for a time or for always and corrects or abrogates those that have been made. By the

second, he makes peace or war, sends or receives embassies, establishes security, and prevents invasions. By the third, he punishes crimes or judges disputes between individuals. The last will be called the power of judging, and the former simply the executive power of the state.

Political liberty in a citizen is that tranquillity of spirit which comes from the opinion each one has of his security, and in order for him to have this liberty the government must be such that one citizen cannot fear another citizen.

When legislative power is united with executive power in a single person or in a single body of the magistracy, there is no liberty, because one can fear that the same monarch or senate that makes tyrannical laws will execute them tyrannically.

Nor is there liberty if the power of judging is not separate from legislative power and from executive power. If it were joined to legislative power, the power over the life and liberty of the citizens would be arbitrary, for the judge would be the legislator. If it were joined to executive power, the judge could have the force of an oppressor.

All would be lost if the same man or the same body of principal men, either of nobles, or of the people, exercised these three powers: that of making the laws, that of executing public resolutions, and that of judging the crimes or the disputes of individuals.

In most kingdoms in Europe, the government is moderate because the prince, who has the first two powers, leaves the exercise of the third to his subjects. Among the Turks, where the three powers are united in the person of the sultan, an atrocious despotism reigns.

In the Italian republics, where the three powers are united, there is less liberty than in our monarchies. Thus, in order to maintain itself, the government needs means as violent as in the government of the Turks; witness the state inquisitors[6] and the lion's maw into which an informer can, at any moment, throw his note of accusation.

Observe the possible situation of a citizen in these republics. The body of the magistracy, as executor of the laws, retains all the power it has given itself as legislator. It can plunder the state by using its general wills; and, as it also has the power of judging, it can destroy each citizen by using its particular wills.

[6] In Venice.

There, all power is one; and, although there is none of the external pomp that reveals a despotic prince, it is felt at every moment.

Thus princes who have wanted to make themselves despotic have always begun by uniting in their person all the magistracies, and many kings of Europe have begun by uniting all the great posts of their state.

I do believe that the pure hereditary aristocracy of the Italian republics is not precisely like the despotism of Asia. The multitude of magistrates sometimes softens the magistracy; not all the nobles always concur in the same designs; there various tribunals are formed that temper one another. Thus, in Venice, the *Great Council* has legislation; the *Pregadi*, execution; *Quarantia*, the power of judging. But the ill is that these different tribunals are formed of magistrates taken from the same body; this makes them nearly a single power.

The power of judging should not be given to a permanent senate but should be exercised by persons drawn from the body of the people[7] at certain times of the year in the manner prescribed by law to form a tribunal which lasts only as long as necessity requires.

In this fashion the power of judging, so terrible among men, being attached neither to a certain state nor to a certain profession, becomes, so to speak, invisible and null. Judges are not continually in view; one fears the magistracy, not the magistrates.[a]

In important accusations, the criminal in cooperation with the law must choose the judges, or at least he must be able to challenge so many of them that those who remain are considered to be of his choice.

The two other powers may be given instead to magistrates or to permanent bodies because they are exercised upon no individual, the one being only the general will of the state, and the other, the execution of that general will.

But though tribunals should not be fixed, judgments should be fixed to such a degree that they are never anything but a precise text of the law. If judgments were the individual opinion of a judge, one would live in this society without knowing precisely what engagements one has contracted.

Further, the judges must be of the same condition as the accused, or

[7] As in Athens.

[a] These *juges*, "jurors," as the office is called in English, are judges as they make the judgments.

his peers, so that he does not suppose that he has fallen into the hands of people inclined to do him violence.

If the legislative power leaves to the executive power the right to imprison citizens who can post bail for their conduct, there is no longer any liberty, unless the citizens are arrested in order to respond without delay to an accusation of a crime the law has rendered capital; in this case they are really free because they are subject only to the power of the law.

But if the legislative power believed itself endangered by some secret conspiracy against the state or by some correspondence with its enemies on the outside, it could, for a brief and limited time, permit the executive power to arrest suspected citizens who would lose their liberty for a time only so that it would be preserved forever.

And this is the only means consistent with reason of replacing the tyrannical magistracy of the *ephors* and the *state inquisitors* of Venice, who are also despotic.

As, in a free state, every man, considered to have a free soul, should be governed by himself, the people as a body should have legislative power; but, as this is impossible in large states and is subject to many drawbacks in small ones, the people must have their representatives do all that they themselves cannot do.

One knows the needs of one's own town better than those of other towns, and one judges the ability of one's neighbors better than that of one's other compatriots. Therefore, members of the legislative body must not be drawn from the body of the nation at large; it is proper for the inhabitants of each principal town to choose a representative from it.

The great advantage of representatives is that they are able to discuss public business. The people are not at all appropriate for such discussions; this forms one of the great drawbacks of democracy.

It is not necessary that the representatives, who have been generally instructed by those who have chosen them, be instructed about each matter of business in particular, as is the practice in the Diets of Germany. It is true that, in their way, the word of the deputies would better express the voice of the nation; but it would produce infinite delays and make each deputy the master of all the others, and on the most pressing occasions the whole force of the nation could be checked by a caprice.

Mr. Sidney says properly that when the deputies represent a body of

people, as in Holland, they should be accountable to those who have commissioned them; it is another thing when they are deputed by boroughs, as in England.[b]

In choosing a representative, all citizens in the various districts should have the right to vote except those whose estate is so humble that they are deemed to have no will of their own.

A great vice in most ancient republics was that the people had the right to make resolutions for action, resolutions which required some execution, which altogether exceeds the people's capacity. The people should not enter the government except to choose their representatives; this is quite within their reach. For if there are few people who know the precise degree of a man's ability, yet every one is able to know, in general, if the one he chooses sees more clearly than most of the others.

Nor should the representative body be chosen in order to make some resolution for action, a thing it would not do well, but in order to make laws or in order to see if those they have made have been well executed; these are things it can do very well and that only it can do well.

In a state there are always some people who are distinguished by birth, wealth, or honors; but if they were mixed among the people and if they had only one voice like the others, the common liberty would be their enslavement and they would have no interest in defending it, because most of the resolutions would be against them. Therefore, the part they have in legislation should be in proportion to the other advantages they have in the state, which will happen if they form a body that has the right to check the enterprises of the people, as the people have the right to check theirs.

Thus, legislative power will be entrusted both to the body of the nobles and to the body that will be chosen to represent the people, each of which will have assemblies and deliberations apart and have separate views and interests.

Among the three powers of which we have spoken, that of judging is in some fashion, null. There remain only two; and, as they need a power whose regulations temper them, that part of the legislative body composed of the nobles is quite appropriate for producing this effect.

The nobility should be hereditary. In the first place, it is so by its nature; and, besides, it must have a great interest in preserving its

[b] Algernon Sidney, 1622–1683, an English Whig politician and author of *Discourses Concerning Government* (1698), chap. 3, sect. 38.

prerogatives, odious in themselves, and which, in a free state, must always be endangered.

But, as a hereditary power could be induced to follow its particular interests and forget those of the people, in the things about which one has a sovereign interest in corrupting, for instance, in the laws about levying silver coin, it must take part in legislation only through its faculty of vetoing and not through its faculty of enacting.

I call the right to order by oneself, or to correct what has been ordered by another, the *faculty of enacting*. I call the right to render null a resolution taken by another the *faculty of vetoing*, which was the power of the tribunes of Rome. And, although the one who has the faculty of vetoing can also have the right to approve, this approval is no more than a declaration that one does not make use of one's faculty of vetoing, and it derives from that faculty.

The executive power should be in the hands of a monarch, because the part of the government that almost always needs immediate action is better administered by one than by many, whereas what depends on legislative power is often better ordered by many than by one.

If there were no monarch and the executive power were entrusted to a certain number of persons drawn from the legislative body, there would no longer be liberty, because the two powers would be united, the same persons sometimes belonging and always able to belong to both.

If the legislative body were not convened for a considerable time, there would no longer be liberty. For one of two things would happen: either there would no longer be any legislative resolution and the state would fall into anarchy; or these resolutions would be made by the executive power, and it would become absolute.

It would be useless for the legislative body to be convened without interruption. That would inconvenience the representatives and besides would overburden the executive power, which would not think of executing, but of defending its prerogatives and its right to execute.

In addition, if the legislative body were continuously convened, it could happen that one would do nothing but replace the deputies who had died with new deputies; and in this case, if the legislative body were once corrupted, the ill would be without remedy. When various legislative bodies follow each other, the people, holding a poor opinion of the current legislative body, put their hopes, reasonably enough, in the one that will follow; but if the legislative body were always the same,

people, as in Holland, they should be accountable to those who have commissioned them; it is another thing when they are deputed by boroughs, as in England.[b]

In choosing a representative, all citizens in the various districts should have the right to vote except those whose estate is so humble that they are deemed to have no will of their own.

A great vice in most ancient republics was that the people had the right to make resolutions for action, resolutions which required some execution, which altogether exceeds the people's capacity. The people should not enter the government except to choose their representatives; this is quite within their reach. For if there are few people who know the precise degree of a man's ability, yet every one is able to know, in general, if the one he chooses sees more clearly than most of the others.

Nor should the representative body be chosen in order to make some resolution for action, a thing it would not do well, but in order to make laws or in order to see if those they have made have been well executed; these are things it can do very well and that only it can do well.

In a state there are always some people who are distinguished by birth, wealth, or honors; but if they were mixed among the people and if they had only one voice like the others, the common liberty would be their enslavement and they would have no interest in defending it, because most of the resolutions would be against them. Therefore, the part they have in legislation should be in proportion to the other advantages they have in the state, which will happen if they form a body that has the right to check the enterprises of the people, as the people have the right to check theirs.

Thus, legislative power will be entrusted both to the body of the nobles and to the body that will be chosen to represent the people, each of which will have assemblies and deliberations apart and have separate views and interests.

Among the three powers of which we have spoken, that of judging is in some fashion, null. There remain only two; and, as they need a power whose regulations temper them, that part of the legislative body composed of the nobles is quite appropriate for producing this effect.

The nobility should be hereditary. In the first place, it is so by its nature; and, besides, it must have a great interest in preserving its

[b] Algernon Sidney, 1622–1683, an English Whig politician and author of *Discourses Concerning Government* (1698), chap. 3, sect. 38.

prerogatives, odious in themselves, and which, in a free state, must always be endangered.

But, as a hereditary power could be induced to follow its particular interests and forget those of the people, in the things about which one has a sovereign interest in corrupting, for instance, in the laws about levying silver coin, it must take part in legislation only through its faculty of vetoing and not through its faculty of enacting.

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the people, seeing it corrupted, would expect nothing further from its laws; they would become furious or would sink into indolence.

The legislative body should not convene itself. For a body is considered to have a will only when it is convened; and if it were not convened unanimously, one could not identify which part was truly the legislative body, the part that was convened or the one that was not. For if it had the right to prorogue itself, it could happen that it would never prorogue itself; this would be dangerous in the event that it wanted to threaten executive power. Besides, there are some times more suitable than others for convening the legislative body; therefore, it must be the executive power that regulates, in relation to the circumstances it knows, the time of the holding and duration of these assemblies.

If the executive power does not have the right to check the enterprises of the legislative body, the latter will be despotic, for it will wipe out all the other powers, since it will be able to give to itself all the power it can imagine.

But the legislative power must not have the reciprocal faculty of checking the executive power. For, as execution has the limits of its own nature, it is useless to restrict it; besides, executive power is always exercised on immediate things. And the power of the tribunes in Rome was faulty in that it checked not only legislation but even execution; this caused great ills.

But if, in a free state, legislative power should not have the right to check executive power, it has the right and should have the faculty to examine the manner in which the laws it has made have been executed; and this is the advantage of this government over that of Crete and Lacedaemonia, where the *kosmoi* and the *ephors* were not held accountable for their administration.

But, whether or not this examination is made, the legislative body should not have the power to judge the person, and consequently the conduct, of the one who executes. His person should be sacred because, as he is necessary to the state so that the legislative body does not become tyrannical, if he were accused or judged there would no longer be liberty.

In this case, the state would not be a monarchy but an unfree republic. But, as he who executes cannot execute badly without having as ministers wicked counsellors who hate the law although the laws favor them as men, these counsellors can be sought out and punished.

And this is the advantage of this government over that of Cnidus, where the people could never get satisfaction for the injustices that had been done to them, as the law did not permit calling the *amymones*[8] to judgment even after their administration.[9]

Although in general the power of judging should not be joined to any part of the legislative power, this is subject to three exceptions founded on the particular interests of the one who is to be judged.

Important men are always exposed to envy; and if they were judged by the people, they could be endangered and would not enjoy the privilege of the last citizen of a free state, of being judged by his peers. Therefore, nobles must not be called before the ordinary tribunals of the nation but before that part of the legislative body composed of nobles.

It could happen that the law, which is simultaneously clairvoyant and blind, might be too rigorous in certain cases. But the judges of the nation are, as we have said, only the mouth that pronounces the words of the law, inanimate beings who can moderate neither its force nor its rigor. Therefore, the part of the legislative body, which we have just said is a necessary tribunal on another occasion, is also one on this occasion; it is for its supreme authority to moderate the law in favor of the law itself by pronouncing less rigorously than the law.

It could also happen that a citizen, in matters of public business, might violate the rights of the people and commit crimes that the established magistrates could not or would not want to punish. But, in general, the legislative power cannot judge, and even less so in this particular case, where it represents the interested party, the people. Therefore, it can be only the accuser. But, before whom will it make its accusation? Will it bow before the tribunals of law, which are lower than it and are, moreover, composed of those who, being also of the people, would be swept along by the authority of such a great accuser? No: in order to preserve the dignity of the people and the security of the individual, that part of the legislature drawn from the people must make its accusation before the part of the legislature drawn from the nobles, which has neither the same interests nor the same passions.

[8] These were magistrates elected annually by the people. See Stephanus of Byzantium [*Ethnika* 686; 1958 edn].

[9] One could accuse the Roman magistrates after their magistracy. In Dion. Hal. [*Ant. Rom.*], bk. 9 [9.37.2–4], see the affair of the tribune Genutius.

This last is the advantage of this government over most of the ancient republics, where there was the abuse that the people were judge and accuser at the same time.

Executive power, as we have said, should take part in legislation by its faculty of vetoing; otherwise it will soon be stripped of its prerogatives. But if legislative power takes part in execution, executive power will equally be lost.

If the monarch took part in legislation by the faculty of enacting, there would no longer be liberty. But as in spite of this, he must take part in legislation in order to defend himself, he must take part in it by the faculty of vetoing.

The cause of the change in government in Rome was that the senate, which had one part of the executive power, and the magistrates, who had the other, did not have the faculty of vetoing, as the people had.

Here, therefore, is the fundamental constitution of the government of which we are speaking. As its legislative body is composed of two parts, the one will be chained to the other by their reciprocal faculty of vetoing. The two will be bound by the executive power, which will itself be bound by the legislative power.

The form of these three powers should be rest or inaction. But as they are constrained to move by the necessary motion of things, they will be forced to move in concert.

As executive power belongs to the legislative only through its faculty of vetoing, it cannot enter into the discussion of public business. It is not even necessary for it to propose, because, as it can always disapprove of resolutions, it can reject decisions on propositions it would have wanted left unmade.

In some ancient republics, where the people as a body discussed the public business, it was natural for the executive power to propose and discuss with them; otherwise, there would have been a strange confusion in the resolutions.

If the executive power enacts on the raising of public funds without the consent of the legislature, there will no longer be liberty, because the executive power will become the legislator on the most important point of legislation.

If the legislative power enacts, not from year to year, but forever, on the raising of public funds, it runs the risk of losing its liberty, because the executive power will no longer depend upon it; and when one holds such a right forever, it is unimportant whether that right comes from

oneself or from another. The same is true if the legislative power enacts, not from year to year, but forever, about the land and sea forces, which it should entrust to the executive power.

So that the one who executes is not able to oppress, the armies entrusted to him must be of the people and have the same spirit as the people, as they were in Rome until the time of Marius. This can be so in only two ways: either those employed in the army must have enough goods to be answerable for their conduct to the other citizens and be enrolled for a year only, as was practiced in Rome; or, if the troops must be a permanent body, whose soldiers come from the meanest parts of the nation, legislative power must be able to disband them as soon as the legislature so desires; the soldiers must live with the citizens, and there must not be a separate camp, a barracks, or a fortified place.

Once the army is established, it should be directly dependent on the executive power, not on the legislative body; and this is in the nature of the thing, as its concern is more with action than with deliberation.

Men's manner of thinking is to make more of courage than of timidity; more of activity than of prudence; more of force than of counsel. The army will always scorn a senate and respect its officers. It will not make much of the orders sent from a body composed of people it believes timid and, therefore, unworthy to command it. Thus, whenever the army depends solely on the legislative body, the government will become military. And if the contrary has ever occured, it is the effect of some extraordinary circumstances; it is because the army there is always separate, because it is composed of several bodies each of which depends upon its particular province, because the capitals are in excellent locations whose situation alone defends them and which have no troops.

Holland is even more secure than Venice; it could flood rebellious troops; it could leave them to die of hunger; since the troops are not in towns that could give them sustenance, their sustenance is precarious.

For if, in the case of an army governed by the legislative body, particular circumstances keep the government from becoming military, one will encounter other drawbacks; one of these two things must happen, either the army must destroy the government, or the government must weaken the army.

And this weakening will have a fatal cause: it will arise from the very weakness of the government.

If one wants to read the admirable work by Tacitus, *On the Mores of*

the Germans,[10] one will see that the English have taken their idea of political government from the Germans. This fine system was found in the forests.

Since all human things have an end, the state of which we are speaking will lose its liberty; it will perish. Rome, Lacedaemonia, and Carthage have surely perished. This state will perish when legislative power is more corrupt than executive power.

It is not for me to examine whether at present the English enjoy this liberty or not. It suffices for me to say that it is established by their laws, and I seek no further.

I do not claim hereby to disparage other governments, or to say that this extreme political liberty should humble those who have only a moderate one. How could I say that, I who believe that the excess even of reason is not always desirable and that men almost always accommodate themselves better to middles than to extremities?

Harrington, in his *Oceana*,[c] has also examined the furthest point of liberty to which the constitution of a state can be carried. But of him it can be said that he sought this liberty only after misunderstanding it, and that he built Chalcedon with the coast of Byzantium before his eyes.

[10] "On lesser matters the princes consult, on greater ones, everybody does; yet even when a decision is in the power of the people, it is thoroughly considered by the princes" [L.]. [Tacitus, *Germania*, chap. 11.]

[c] James Harrington, *Commonwealth of Oceana*.

CHAPTER 7

The monarchies that we know

The monarchies we know do not have liberty for their direct purpose as does the one we have just mentioned; they aim only for the glory of the citizens, the state, and the prince. But this glory results in a spirit of liberty that can, in these states, produce equally great things and can perhaps contribute as much to happiness as liberty itself.

The three powers are not distributed and cast on the model of the constitution which we have mentioned; each instance shows a particular distribution of them and each approximates political liberty accordingly; and, if it did not approximate it, the monarchy would degenerate into despotism.

CHAPTER 8

Why the ancients had no clear idea of monarchy

The ancients did not at all know the government founded on a body of nobility and even less the government founded on a legislative body formed of the representatives of a nation. The republics of Greece and Italy were towns in which each had its own government and assembled its own citizens within its walls. Before the Romans had swallowed up all the republics, there were almost no kings anywhere, in Italy, Gaul, Spain, Germany; all of these were small peoples or small republics. Even Africa was subject to a large republic; Asia Minor was occupied by Greek colonies. Therefore, there was no example either of deputies from towns or of assemblies of the estates; one had to go as far as Persia to find the government of one alone.

It is true that there were federal republics; many towns sent deputies to an assembly. But I say that there was no monarchy on this model.

Here is how the plan for the monarchies that we know was formed. The Germanic nations who conquered the Roman Empire were very free, as is known. On the subject one has only to see Tacitus on the *Mores of the Germans*. The conquerors spread out across the country; they lived in the countryside, rarely in the towns. When they were in Germany, the whole nation could be assembled. When they dispersed during the conquest, they could no longer assemble. Nevertheless, the nation had to deliberate on its business as it had done before the conquest; it did so by representatives. Here is the origin of Gothic government among us. It was at first a mixture of aristocracy and monarchy. Its drawback was that the common people were slaves; it was a good government that had within itself the capacity to become better. Giving letters of emancipation became the custom, and soon the civil liberty of the people, the prerogatives of the nobility and of the clergy, and the power of the kings, were in such concert that there has never been, I believe, a government on earth as well tempered as that of each part of Europe during the time that this government continued to exist; and it is remarkable that the corruption of the government of a

conquering people should have formed the best kind of government men have been able to devise.

CHAPTER 9

Aristotle's manner of thinking

An awkwardness is clearly seen in Aristotle's treatment of monarchy.[11] He establishes five kinds: he does not distinguish among them by the form of the constitution but by accidental things, like the virtues or the vices of the prince, or by extrinsic things, like the usurpation of the tyranny or succession to it.

Aristotle includes in the list of monarchies both the empire of the Persians and the kingdom of Lacedaemonia. But who does not see that the one was a despotic state and the other a republic?

The ancients, who did not know of the distribution of the three powers in the government of one alone, could not achieve a correct idea of monarchy.

[11] [Aristotle] *Pol.*, bk. 3, chap. 14 [1284b35–1285b33].

CHAPTER 10

The manner of thinking of other political men

In order to temper the government of one alone, Arribas,[12] king of Epirus, could imagine only a republic. The Molossians, not knowing how to restrict this power, made two kings;[13] this weakened the state more than the command: one wanted rivals, and one had enemies.

Two kings were allowed only in Lacedaemonia; they did not form the constitution there but rather were a part of the constitution.

[12] See Justin [*Epitome historiarum Philippicarum*], bk. 17 [17.3.12].
[13] Aristotle, *Pol.*, bk. 5, chap. 9 [1313a24].

CHAPTER 11

On the kings of heroic times among the Greeks

Among the Greeks in heroic times, a kind of monarchy was established that did not continue to exist.[14] Those who had invented the arts, waged war for the people, assembled men who were scattered here and there or given them lands, won the kingdom for themselves and passed it down to their children. They were kings, priests, and judges. This is one of the five kinds of monarchy of which Aristotle speaks,[15] and this is the only one that might arouse the idea of the monarchical constitution. But the plan of this constitution is the opposite of that of our monarchies today.

The three powers were distributed there so that the people had the legislative power,[16] and the king, the executive power and the power of judging; whereas, in the monarchies we know, the prince has the executive and the legislative power, or at least a part of the legislative power, but he does not judge.

In the government of the kings of heroic times, the three powers were badly distributed. These monarchies could not continue to exist; for, as soon as the people could legislate, they could reduce royalty to nothing at the least caprice, as they did everywhere.

Among a free people who have legislative power, among a people enclosed within a town, where everything odious becomes even more odious, the masterwork of legislation is to know where properly to place the power of judging. But it could not be placed worse than in the hands of the one who already had executive power. The monarch became terrible immediately. But at the same time, since he did not legislate, he could not defend himself against legislation; he had too much power and he did not have enough.

It had not yet been discovered that the prince's true function was to establish judges and not to judge. The opposite policy rendered unbearable the government of one alone. All these kings were driven out. The Greeks did not imagine the true distribution of the three powers in the government of one alone, they imagined it only in the

[14] Aristotle, *Pol.*, bk. 3, chap. 14 [1285b2–19].
[15] Ibid. [Aristotle, *Pol.* 1285b2–19].
[16] See Plutarch [*Vit.*], *Theseus* [24, 25.2]. See also Thucydides [*The Peloponnesian War*], bk. 1 [1.13].

government of many, and they called this sort of constitution, *police*.[17d]

[17]See Aristotle, *Pol.*, bk. 4, chap. 8 [1293b30–1294a25].

[d]Here Montesquieu makes a connection between *police* (see note [c], bk. 4; note [a], bk. 12; note [c], bk. 26) and the "polity" of the Greeks.

CHAPTER 12

On the government of the Roman kings and how the three powers were distributed in it

The government of the Roman kings was somewhat related to that of the kings of heroic times among the Greeks. Like them it fell, from its general vice, although in itself and in its particular nature it was very good.

In order to make this government understood, I shall distinguish the government of the first five kings from that of Servius Tullius and from that of Tarquin.

The crown was elective; and under the first five kings, the senate took the greatest part in their election.

After a king died, the senate considered whether one would keep the form of government that had been established. If the senate judged it advisable to keep the form of government, it named a magistrate[18] drawn from its body to elect a king; the senate had to approve the election; the people, to confirm it; the auspices, to guarantee it. If one of these three conditions were missing, there had to be another election.

The constitution was monarchical, aristocratic, and popular, and such was the harmony of power that there was neither jealousy nor dispute in the first reigns. The king commanded the armies and had the stewardship of the sacrifices; he had the power of judging civil[19] and criminal[20] suits; he convoked the senate; he assembled the people; he

[18]Dion. Hal. [*Ant. Rom.*], bk. 2, p. 120 [2.58.3]; bk. 4, pp. 242–243 [4.40.2].

[19]See the discourse by Tanaquil in Livy, decade 1, bk. 1 [1.41, 43]; and the ruling of Servius Tullius in Dion. Hal. [*Ant. Rom.*], bk. 4, p. 229 [4.25.2].

[20]See Dion. Hal. [*Ant. Rom.*], bk. 2, p. 118 [2.56.3; see also 2.14.1], and bk. 3, p. 171 [3.30.1–5].

brought certain matters of public business before them and ruled on others with the senate.[21]

The senate had great authority. The kings often picked senators to judge with them; they brought matters of public business to the people only after these had been deliberated upon in the senate.[22]

The people had the right to elect magistrates,[23] to consent to the new laws, and, when the king permitted, to declare war and to make peace. They did not have the power to judge. When Tullius Hostilius referred the judgment of Horatius to the people, he had particular reasons that are found in Dionysius of Halicarnassus.[24]

The constitution changed under Servius Tullius.[25] The senate had no part in his election; he had himself proclaimed king by the people. He divested himself of civil judgments[26] and kept only criminal judgments for himself; he carried all public business directly to the people; he relieved the people of taxes and put the entire load on the patricians. Thus, to the extent that he weakened the royal power and the authority of the senate, he increased the power of the people.[27]

Tarquin had himself elected neither by the senate nor by the people; he regarded Servius Tullius as a usurper and took the crown as a hereditary right; he exterminated most of the senators; he no longer consulted those who remained and did not even summon them to hear his judgments.[28] His power increased, but what was odious about this power became still more odious: he usurped the power of the people; he made laws without them; he even made some in opposition to them.[29] He would have united the three powers in his person, but the people remembered at a certain moment that they were the legislator, and Tarquin was no longer.

[21]It was by a senatus-consult that Tullius Hostilius was sent to destroy Alba. Dion. Hal. [*Ant. Rom.*], bk. 3, pp. 167 and 172 [3.26.6; 3.31.1–2].

[22]Ibid. [Dion. Hal., *Ant. Rom.*], bk. 4, p. 276 [[275] 4.84.2; see also 4.75.4].

[23]Ibid. [Dion. Hal., *Ant. Rom.*], bk. 2 [2.14.3]. They nevertheless must not have filled all the posts, because Valerius Publicola made the famous law forbidding any citizen to hold any post unless he had obtained it by the suffrage of the people.

[24][Dion. Hal., *Ant. Rom.*] bk. 3, p. 159 [3.22.4–8].

[25][Dion. Hal., *Ant. Rom.*] bk. 4 [4.40.1].

[26]"He gave up half the royal power," says Dion. Hal. [*Ant. Rom.*], bk. 4, p. 229 [4.25.1].

[27]People believed that if he had not been prevented by Tarquin, he would have established popular government. Dion. Hal. [*Ant. Rom.*], bk. 4, p. 243 [4.40.3].

[28]Dion. Hal. [*Ant. Rom.*], bk. 4 [4.42.4].

[29]Ibid. [Dion. Hal., *Ant. Rom.*, 4.43–44.]

CHAPTER 13

General reflections on the state of Rome after the expulsion of the kings

One can never leave the Romans; thus it is that even today in their capital one leaves the new palaces to go in search of the ruins; thus it is that the eye that has rested on flower-strewn meadows likes to look at rocks and mountains.

The patrician families had always had great prerogatives. These distinctions, great under the kings, became much more important after the kings were expelled. This caused jealousy among the plebeians, who wanted to bring down the patricians. Disputes struck at the constitution without weakening the government, for, provided the magistracies preserved their authority, it did not matter from which family the magistrates came.

An elective monarchy, as was Rome, necessarily assumes a powerful aristocratic body that sustains it; this failing, it changes immediately into a tyranny or into a popular state. But a popular state does not need family distinctions to maintain itself. This is why the patricians, who were necessary parts of the constitution at the time of the kings, became a superfluous part of it at the time of the consuls; the people were able to bring down the patricians without destroying themselves and to change the constitution without corrupting it.

When Servius Tullius debased the patricians, Rome had to fall from the hands of the kings into those of the people. But when the people brought the patricians down, they did not have to fear falling back into the hands of the kings.

A state can change in two ways: either because its constitution is corrected or because it is corrupted. If the state has preserved its principles and its constitution changes, the latter corrects itself; if the state has lost its principles when its constitution starts to change, the constitution is corrupted.

After the expulsion of the kings, Rome would have been a democracy. The people already had legislative power; their unanimous vote had driven out the kings, and if their will had flagged, the Tarquins could have returned at any moment. To claim that the people had wanted to drive away the kings only to become slaves to a few families would not be reasonable. Therefore the situation required that Rome

be a democracy, but nevertheless it was not one. The power of the principal men had yet to be tempered, and the laws had yet to be inclined toward democracy.

States are often more flourishing during the imperceptible shift from one constitution to another than they are under either constitution. At that time all the springs of the government are stretched; all the citizens have claims; one is attacked or flattered; and there is a noble rivalry between those who defend the declining constitution and those who put forward the one that prevails.

CHAPTER 14

How the distribution of the three powers began to change after the expulsion of the kings

Four things principally ran counter to the liberty of Rome. The patricians alone had obtained all the sacred, political, civil and military employments; an exorbitant power had been attached to the consulate; the people were subjected to outrages; finally, they had almost no influence left in the voting. The people corrected these four abuses.

1. They had it established that there would be magistracies to which plebeians could aspire, and they gradually obtained a place for themselves in all of them except that of the Interrex.

2. The consulate was broken up and formed into several magistracies. Praetors were created[30] who were given the power to judge on private suits; quaestors[31] were named in order to have public crimes judged; aediles were established to whom supervision of the police was given; also treasurers[32] were made who were to administer the public monies; finally, by the creation of censors, the consuls were removed from the part of the legislative power that regulates the mores of citizens and the immediate police of the various bodies of the state. The principal prerogatives that remained to the consuls were that they presided over the great assemblies of the people,[33] convened the senate, and commanded the armies.

[30] Livy, decade 1, bk. 6 [6.42.11].

[31] *Quaestores parricidi*: Magistrates to try parricides. Pomponius, Law 2, para. 23 [*Corpus Juris Civilis*, *Digest* 1.2.23]; *de origine juris et omnium magistratuum et successione prudentum*.

[32] Plutarch [*Vit.*], *Publicola* [12.2].

[33] *Comitiis centuriatis*.

3. The sacred laws established tribunes who could, at any moment, check the enterprises of the patricians and who prevented not only particular wrongs but also general ones.

Finally, the plebeians increased that influence in public decisions. The Roman people were divided in three ways: by centuries, by curiae, and by tribes; and when they voted, they were convened and formed in one of these three ways.

In the first, the patricians, the principal men, the rich people, and the senate, groups that were nearly the same, had almost all the authority; in the second, they had less; in the third, still less.

The division by centuries was a division based on the census and on means, rather than a division by persons. The whole of the people was divided into one hundred and ninety-three centuries,[34] each having one vote. The patricians and the principal men formed the first ninety-eight centuries; the rest of the citizens were spread over the other ninety-five. Therefore the patricians were the masters of the votes in this division.

In the division by curiae,[35] the patricians did not have the same advantages. Yet they had some. The auspices had to be consulted, and the patricians were in control of them; no proposition could be made to the people that had not previously been brought to the senate and approved by a senatus-consult. But in the division by tribes, there was no question of auspices or of senatus-consult, and the patricians were not admitted.

Now, the people kept on seeking to use the division by curiae for those assemblies that were customarily divided by centuries and the division by tribes for those assemblies that were done by curiae, which led to the transfer of public business from the hands of the patricians into those of the plebeians.

Thus, when the plebeians had gained the right to judge patricians, beginning with the affair of Coriolanus,[36] the plebeians wanted to judge them assembled by tribes[37] and not by centuries; and when the new magistracies of tribunes and aediles, which favored the people, were

[34] See on this, Livy, bk. 1 [1.43]; and Dion. Hal. [*Ant. Rom.*], bk. 4 [4.16–22] and bk. 7 [7.59.2–8].
[35] Dion. Hal. [*Ant. Rom.*], bk. 9, p. 598 [9.41.2–4].
[36] Dion. Hal. [*Ant. Rom.*], bk. 7 [7.59.9–10].
[37] Contrary to the former usage, as can be seen in Dion. Hal. [*Ant. Rom.*], bk. 5, p. 320 [5.10.7].

established,[38] the people obtained that they would be assembled by curiae to name them; and when their power was firm, they gained the naming of the tribunes and the aediles in an assembly by tribes.[39]

[38] [Dion. Hal., *Ant. Rom.*] bk. 6, pp. 410 and 411 [6.89.1–2]. [On the aediles, see 6.90.]
[39] [Dion. Hal., *Ant. Rom.*] bk. 9, p. 605 [9.43.4].

CHAPTER 15

How, in the flourishing state of the republic, Rome suddenly lost its liberty

In the heat of the disputes between the patricians and the plebeians, the latter asked for fixed laws to be given so that judgments would no longer be the result of a capricious will or an arbitrary power. After much resistance, the senate acquiesced. Decemvirs were named to compose these laws. It was believed that they had to be granted great power because they had to give laws to parties that were almost incompatible. The naming of all the magistrates was suspended, and in the *comitia* they were elected sole administrators of the republic. They were invested with both the power of the consuls and the power of the tribunes. The former gave them the right to convene the senate; the latter, that of convening the people; but they convoked neither the senate nor the people. Ten men alone in the republic had all the legislative power, all the executive power, all the power of judgment. Rome saw itself subject to a tyranny as cruel as that of Tarquin. When Tarquin exercised his oppressive measures, Rome was indignant at the power he had usurped; when the decemvirs exercised theirs, it was astonished by the power it had given away.

But what was this tyrannical system, produced by people who had gained political and military power only from their knowledge of civil business, and who in the circumstances of that time needed the citizens' cowardice inside so that they would let themselves be governed, and the citizens' courage outside as a defense?

The spectacle of the death of Virginia, sacrificed by her father to modesty and to liberty, made the power of the decemvirs evaporate. Each man was free because each one was offended; everyone became a citizen because everyone was a father. The senate and the people

returned to a liberty that had been entrusted to ridiculous tyrants.

The Roman people, more than any other, were moved by spectacles. That of the bloody body of Lucretia brought royalty to an end. The debtor who appeared covered with sores in the square changed the form of the republic. The sight of Virginia drove out the decemvirs. For Manlius to be condemned, the people had to be put where they could not see the Capitol. The bloody robe of Caesar returned Rome to servitude.

CHAPTER 16

On legislative power in the Roman republic

There were no rights to dispute under the decemvirs, but when liberty returned, jealousies could be seen anew; so long as some privileges remained to the patricians, the plebeians took them away.

Little ill would have been done if the plebeians had been satisfied to deprive the patricians of the prerogatives instead of also offending them in their status as citizens.[e] When the people were assembled by curiae or by centuries, they were composed of senators, patricians and plebeians. In the disputation, the plebeians won the point[40] that they alone, without the patricians or the senate, could make laws, which were called plebiscites, and the *comitia* where they were made was called the *comitia* by tribes. Thus, there were cases in which the patricians[41] had no part in legislative power[42] and in which they were subject to the legislative power of another body of the state. It was a frenzy of liberty. The people, in order to establish democracy, ran counter to the very principles of democracy. It seemed that such an exorbitant power should have reduced the authority of the senate to

[40] Dion. Hal. [*Ant. Rom.*], bk. 11, p. 725 [11.45].

[41] By the sacred laws, the plebeians could hold plebiscites alone and without admitting the patricians to their assembly. Dion. Hal. [*Ant. Rom.*], bk. 6, p. 410 [6.89] and bk. 7, p. 430 [7.16.1–2].

[42] By the law made after the expulsion of the decemvirs, patricians were made subject to plebiscites though they had no voice in them. Livy, bk. 3 [3.55.3]; and Dion. Hal. [*Ant. Rom.*], bk. 11, p. 775 [11.45]. And this law was confirmed by that of Publius Philo, dictator in the Roman year 416 [338(339) B.C.]. Livy, bk. 8 [8.12.14–16].

[e] *qualité de citoyen.*

nothing; but Rome had admirable institutions. These were principally two: in the one, the legislative power of the people was regulated; in the other, it was limited.

Every five years the censors formed and created the body of the people, as the consuls had formerly done;[43] they exercised legislation even over the body that had legislative power. "Tiberius Gracchus, censor," says Cicero, "transferred the freedmen to the tribes of the town, not by the force of his eloquence, but by a word and by a gesture, and if he had not, we would no longer have this republic, which we barely sustain today."[f]

On the other hand, the senate had the power to remove the republic from the hands of the people, so to speak, by creating a dictator before whom the sovereign bowed and the most popular laws remained silent.[44]

[43] In the Roman year 312 [442 B.C.], the consuls still took the census, as appears in Dion. Hal. [*Ant. Rom.*], bk. 11 [11.63.2].

[44] Such as those that permitted the ordinances of every magistrate to be appealed to the people.

[f] Cicero, *De oratore* 1.9.38.

CHAPTER 17

On executive power in the same republic

If the people were jealous of their legislative power, they were less so of their executive power. They left it almost entirely to the senate and the consuls, and they reserved to themselves scarcely more than the right to elect magistrates and to confirm the acts of the senate and of the generals.

Rome, whose passion was to command, whose ambition was to subject everything, who had always usurped, who usurped still, continually pursued great matters of public business; its enemies plotted against it, or it plotted against them.

As it was obliged to conduct itself, on the one hand, with heroic courage and, on the other hand, with consummate wisdom, the state of things required that the senate direct public business. The people quarreled with the senate over all the branches of legislative power,

because they were jealous of their liberty; they did not quarrel with it over the branches of executive power, because they were jealous of their glory.

The part played by the senate in executive power was so great that Polybius[45] says all foreigners thought that Rome was an aristocracy. The senate disbursed the public funds and farmed out the revenues; it was the arbiter for suits of the allies; it decided on war and peace and directed the consuls in this regard; it fixed the number of Roman and allied troops, distributed the provinces and the armies to the consuls or the praetors, and, when their year of command expired, it could give them to a successor; it decreed triumphs; it received and sent embassies; it named kings, rewarded them, punished them, judged them, and gave or made them lose the title of allies of the Roman people.

The consuls levied the troops that they were to lead to war; they commanded the armies on land or on sea, they marshaled the allies; in the provinces they had all the power of the republic; they made peace with vanquished peoples, and imposed conditions on them or referred them to the senate.

In early times, when the people had some part in the business of war and peace, they exercised their legislative power rather than their executive power. They scarcely did more than confirm what the kings had done and what the consuls or the senate had done after them. The people were so far from being the arbiters of war that we see that the consuls or the senate often made war in spite of the opposition of their tribunes. But in the drunkenness of their prosperity, they increased their executive power.[g] Thus,[46] they themselves created tribunes in the legions who had until then been named by the generals, and some time before the first Punic War they ruled that they alone would have the right to declare war.[47]

[45] [Polybius, *Historiae*] bk. 6 [6.13.8–9].

[46] In the Roman year 444 [310 B.C.], Livy, bk. 9 [9.30.3]. When the war against Perseus appeared perilous, a senatus-consult ordained that this law would be suspended, and the people consented to it. Livy, decade 5, bk. 2 [42.31.5].

[47] They wrested it from the senate, says Johann Freinsheim [*Supplementorum Livianorum*], decade 2, bk. 6 [16.23].

[g] This sentence appears in earlier editions, but not in the Masson edition. We have included it here as it seems to be required for the sense of the paragraph.

CHAPTER 18

On the power of judging in the Roman government

The power of judging was given to the people, to the senate, to the magistrates, and to certain judges. Its distribution must be seen. I begin with matters of civil business.

After the kings, the consuls judged,[48] and the praetors judged after the consuls. Servius Tullius had divested himself of judging civil suits; the consuls did not judge them either except in very rare cases[49] that were called, for this reason, *extraordinary*.[50] They were satisfied to name the judges and to form the tribunals that were to judge. It seems, according to the discourse of Appius Claudius, in Dionysius of Halicarnassus,[51] that as early as the Roman year 259 [495 B.C.] this was regarded as an established custom among the Romans, and tracing it back to Servius Tullius is not going very far back.

Each year, the praetor made a list[52] or table of those he chose to perform the function of judges during the year of his magistracy. A number sufficient for each suit was taken from it. The English practice is quite similar. And, what was very favorable to liberty[53] is that the praetor selected the judges with the consent of both parties.[54] That many objections to judges may be made in England today amounts to approximately this usage.

These judges decided only questions of fact;[55] for example, if a sum had been paid or not, if an action had been committed or not. But

[48] One cannot doubt that before the creation of the praetors, the consuls had had civil judgments. See Livy, decade 1, bk. 2, p. 19 [2.1.7–8]; Dion. Hal. [*Ant. Rom.*], bk. 10, p. 627 [10.1.3], and bk. 10, p. 645 [10.19.1].

[49] The tribunes often judged alone; nothing made them more odious. Dion. Hal. [*Ant. Rom.*], bk. 11, p. 709 [11.39.1].

[50] *Judicia extraordinaria*: a legal investigation not following the normal procedure. See *Institutes*, bk. 4 [*Corpus Juris Civilis*, *Institutes* 4.15.8; *de interdictis*].

[51] [Dion. Hal., *Ant. Rom.*] bk. 6, p. 360 [6.24.1].

[52] *Album judicum*: a list of judges chosen by the quaestors.

[53] In *Pro Cluentio* [43.120], Cicero says, "Our ancestors did not want a man upon whom the parties had not agreed to be able to be a judge of the reputation of a citizen or of the slightest pecuniary matter."

[54] In the fragments of the Servilian law, the Cornelian law, and others, see the way in which these laws provided the judges in the crimes they proposed to punish. The judges were often selected by choice, sometimes by lot, or, finally, by lot and choice together.

[55] Seneca, *De beneficiis*, bk. 3, chap. 7 *in fine* [3.7.5–7].

because questions of right[56] required a certain ability, these were taken to the tribunal of the centumvirs.[57]

The kings kept for themselves the judgment of criminal suits, and the consuls succeeded them in this. As a consequence of this authority the consul Brutus had his children put to death as well as all who had conspired on behalf of the Tarquins. This power was exorbitant. The consuls, who already held military power, carried its exercise even into the public business of the town, and their proceedings, devoid of the forms of justice, were violent actions rather than judgments.

This brought about the Valerian law, which permitted an appeal to the people of all the ordinances of the consuls that might imperil the life of a citizen. The consuls could no longer pronounce a capital penalty against a Roman citizen except with the will of the people.[58]

One sees in the first conspiracy to reinstate the Tarquins that the consul Brutus judges the guilty; in the second, the senate and the *comitia* are convened to judge.[59]

The laws called *sacred* gave the plebeians the tribunes, who formed a body that at first made immense claims. One does not know which was greater, the cowardly effrontery of the plebeians in asking or the complaisance and readiness of the senate in acquiescing. The Valerian law had permitted appeals to the people, that is, to the people composed of senators, patricians, and plebeians. The plebeians established that appeals would be brought before them. Soon the question was raised as to whether the plebeians could judge a patrician; this was the subject of a debate that arose with the affair of Coriolanus and ended with it. Coriolanus, accused by the tribunes before the people, maintained, contrary to the spirit of the Valerian law, that, being a patrician, he could be judged only by the consuls; the plebeians, contrary to the spirit of the same law, claimed that he was to be judged by them alone, and they judged him.

The Law of the Twelve Tables modified the preceding. It ordered that one could not decide upon the life of a citizen except in the great

[56] See Quintilian [*Institutio oratoria*], bk. 4, p. 54, Paris edn. 1541 [4.2.5].

[57] Law 2, para. 24 [*Corpus Juris Civilis*, *Digest* 1.2.24]; *de origine juris et omnium magistratuum et successione prudentum*. Magistrates called decemvirs presided at the judgment, and the entire proceeding was under the direction of a praetor.

[58] "Thus it was not permissible for the consuls to pronounce the capital penalty against a Roman citizen without the command of the Roman people" [L.]. See Pomponius, Law 2, para. 16 [*Corpus Juris Civilis*, *Digest* 1.2.23]; *de origine juris et omnium magistratuum et successione prudentum*.

[59] Dion. Hal. [*Ant. Rom.*], bk. 5, p. 322 [5.10.7].

estates of the people.[60] Thus, the body of plebeians, or what is the same thing, the *comitia* by tribes, no longer judged any but the crimes whose penalty was only a pecuniary fine. There had to be a *law* to inflict a capital penalty; to condemn to a pecuniary penalty, there had only to be a *plebiscite*.

This provision of the Law of the Twelve Tables was very wise. It led to forming an admirable conciliation between the body of the plebeians and the senate. For, as the competence of each to judge depended on the magnitude of the penalty and the nature of the crime, they had to join together.

The Valerian law removed all that remained in Rome of that government which was related to the Greek kings of heroic times. The consuls found themselves without the power to punish crimes. Although all crimes are public, one must distinguish between those of more interest to the citizens among themselves and those of more interest to the state in its relation with a citizen. The first crimes are called private, the second are public. The people themselves judged public crimes, and in regard to private ones, they named through a particular commission a quaestor to pursue each crime. The people often chose one of the magistrates, but sometimes they chose a private man. He was called a *questor of parricide*. This is mentioned in the Law of the Twelve Tables.[61]

The questor named the judge of the question, as he was called, who picked the judges by lot, formed the tribunal, and presided under him at the judgment.[62]

It is well to observe here the part the senate took in naming the questor, so that one may see how the powers were balanced in this regard. Sometimes the senate had a dictator elected to perform the function of the questor;[63] sometimes it ordered the people to be convoked by a tribune so that they would name a questor;[64] finally, the

[60] The *comitia* by centuries. Thus Manlius Capitolinus was judged in these *comitia*. Livy, decade 1, bk. 6, p. 68 [6.20.10].

[61] So Pomponius says in Law 2, *Digest* [*Corpus Juris Civilis*, *Digest* 1.2.23]; *de origine juris et omnium magistratuum et successione prudentum*. [See bk. 11, n. 31.]

[62] See a fragment of Ulpian, who reports of another one in the Cornelian law; it is found in the *Mosaicarum et Romanorum legum collatio*, tit. 1 [1.1.3; 2, 544, *FIRA*]; *de sicariis et homicidiis*.

[63] That occurred chiefly in the crimes committed in Italy, where the senate had a principal *inspection*. See Livy, decade 1, bk. 9 [9.26.6–19], on the conspiracies of Capua.

[64] It was thus in the prosecution resulting from the death of Posthumius, in the Roman year 340 [414 B.C.]. See Livy [4.50.3–5].

people sometimes named a magistrate to report to the senate about a certain crime and to ask it to name a questor, as seen in the judgment of Lucius Scipio[65] in Livy.[66]

In the Roman year 604 [150 B.C.], some of these commissions were made permanent.[67] One gradually divided all criminal matters into various parts, which were called *perpetual questions*. Various praetors were created, and each was given one of these questions. The praetors were given the power to judge the crimes which fell to them for a year, and after that they went to govern their provinces.

In Carthage, the senate of the One Hundred was composed of judges serving for life.[68] But in Rome the praetors served for one year and the judges served even less than a year because they were chosen for each suit. One has seen, in chapter 6 of this Book, how much this provision was favorable to liberty in certain governments.

Judges were drawn from the order of senators until the times of the Gracchi. Tiberius Gracchus ordered that they be drawn from that of knights; this was such a considerable change that the tribune boasted of having by a single rogation cut the sinews of the senatorial order.

It must be observed that the three powers may be well distributed in relation to the liberty of the constitution, though they are not so well distributed in their relation with the liberty of the citizen. In Rome, as the people had the greater part of the legislative power, part of the executive power, and part of the power of judging, they were a great power that had to be counter-balanced by another. The senate certainly had part of the executive power; it had some branch of the legislative power,[69] but this was not enough to counter-balance the people. It had to have part of the power of judging, and it had a part when judges were chosen from among the senators. When the Gracchi deprived the senators of the power of judging,[70] the senate could no longer stand up to the people. Therefore, they ran counter to the liberty of the constitution in order to favor the liberty of the citizen, but the latter was lost along with the former.

[65] This judgment was rendered in the Roman year 567 [187 B.C.].
[66] [Livy] bk. 8 [38.54].
[67] Cicero, *Brutus* [27.106].
[68] This is proven by Livy, bk. 43 [33.46.7], who says that Hannibal made the magistracy annual.
[69] The senatus consults were in force for a year, though they were not confirmed by the people. Dion. Hal. [*Ant. Rom.*], bk. 9, p. 595 [9.37.2], and bk. 11, p. 735 [11.60.5].
[70] In the year 630 [124 B.C.].

Infinite ills resulted. The constitution was changed at a time when, in the heat of civil discords, there was scarcely a constitution. The knights were no longer the middle order uniting the people and the senate, and the chain of the constitution was broken.

There were also some particular reasons that should have kept judging from being transfered to the knights. The Roman constitution was founded on the principle that those who had enough goods to be responsible to the republic for their conduct should be soldiers. The knights, as the richest men, formed the cavalry of the legions. When their status was raised, they refused to serve any longer in this guard; another cavalry had to be levied; Marius admitted all sorts of people into the legions, and the republic was lost.[71]

In addition, the knights were the tax-collectors of the republic; they were rapacious, they heaped misfortune on misfortune and made public needs rise from public needs. Far from giving such people the power of judging, they should continually have been watched by judges. It must be said in praise of the old French laws that the stipulations made for the men of public business were made with the distrust one has for enemies. In Rome, when judgments were transferred to the tax-collectors, virtue, police, laws, magistracy, and magistrates were no longer.

An artless picture of this is found in fragments of Diodorus of Sicily and of Dio. Diodorus[72] says, "Mutius Scaevola wanted to call back the old mores and live from his own means with frugality and integrity. For his predecessors, in league with the tax-collectors who were at that time judging in Rome, had filled the province with all sorts of crimes. But Scaevola meted out justice to the publicans and put into prison those who had been sending others there."

Dio tells us[73] that Publius Rutilius, his lieutenant, who was no less odious to the knights, was accused on his return of having accepted some presents and was condemned to pay a fine. He surrendered his goods at once. His innocence was manifest, for he was found to have many fewer goods than he was accused of having stolen and he showed the titles to the property; he would no longer remain in the town with such people.

[71] *Capite censos plerosque*: most from the poorest citizens. Sallust, *Jurgurtha* [86.2].
[72] Fragment of this author [Diodorus Siculus, *Bibliotheca historica*], bk. 36 [37.5], in the collection of Constantine Porphyrogenitus, *Extracts of Virtues and Vices*.
[73] Fragment of [Cass. Dio] *Historia Romana* [28.97] drawn from the *Extracts of Virtues and Vices*.

Diodorus says further,[74] "The Italians bought troops of slaves in Sicily to plow their fields and care for their herds; they refused them food. These unfortunate men were obliged to rob on the highways, armed with lances and clubs, covered with the skins of beasts and accompanied by big dogs. The whole province was ravaged, and the people of that country could properly call their own only the things within the town walls. There was neither proconsul nor praetor who could or would oppose this disorder or who would dare punish these slaves, because they belonged to the knights who were the judges in Rome."[75] This was one of the causes of the Slave War. I shall say only one word; a profession that neither has nor can have any object but gain, a profession that was always asking and of whom nothing was asked, an insidious and inexorable profession which impoverished wealth and even poverty, should not have been giving judgments in Rome.

[74] Fragment of [Diodorus Siculus, *Bibliotheca historica*] bk. 34 [34/35.2.32, 29–30], in the *Extracts of Virtues and Vices.*

[75] "They [the slaves] belonged to the ones who did the judging in Rome, and it was from among the Equestrian order that lots were cast to choose judges on the cases involving praetors and proconsuls, who, after having administered a province, were called to trial" [L.]. [Diodorus Siculus, *Bibliotheca historica* 34/35.2.32, 30, 31 (3).]

CHAPTER 19

On the government of the Roman provinces

The three powers were distributed in the town in this way, but it was far from being the same in the provinces. Liberty was at the center and tyranny at the extremities.

At the time when Rome dominated only Italy, the peoples were governed as confederates; the laws of each republic were followed. But, when it carried its conquests further, when the senate had no direct view of the provinces, when the magistrates in Rome could no longer govern the empire, then praetors and proconsuls had to be sent. From then on, there was no longer harmony between the three powers. The power of those who were sent brought together that of all the Roman magistrates (what am I saying?):[h] even that of the senate, even that of

[h] Translator's parentheses.

the people![76] These were despotic magistrates, quite suitable for the far-distant places to which they were sent. They exercised the three powers; they were, if I dare use this term, the pashas of the republic.

We have said elsewhere[77] that by the nature of things in a republic the same citizens had civil and military employments. The result is that a conquering republic can scarcely extend its government and control the conquered state in accordance with the form of its constitution. Indeed, since the magistrate it sends to govern has the executive power over both civil and military business, he must also have legislative power, for who else would make the laws? He must also have the power of judging, for who would judge independently of him? Therefore, the governor sent by a republic must have the three powers, as he had in the Roman provinces.

A monarchy can more easily extend its government, because some of the officers it sends to the provinces have executive power in matters of civil business and others, executive power in matters of military business, which does not bring about despotism.

That a Roman citizen could be judged only by the people was a privilege of great consequence for him. Otherwise he would have been subjected to the arbitrary power of a proconsul or a propraetor in the provinces. The town did not feel the tyranny, which was exercised only over the subject nations.

Thus, in the Roman world, as in Lacedaemonia, those who were free were exceedingly free, and those who were slaves were exceedingly enslaved.

While the citizens paid taxes, they were levied with a very great fairness. The levy was in accord with the establishment of Servius Tullius, who had distributed all the citizens into six classes in the order of their wealth and had set their share of the impost in proportion to the share each one had in the government. The result was that some tolerated the high tax because of their great influence, and that others consoled themselves for their small influence with their low tax.

There was another remarkable thing: it is that, since the division of Servius Tullius by classes was the fundamental principle of the constitution, so to speak, it happened that fairness in levying taxes derived from the fundamental principle of this government and could be removed only when it was.

[76] They gave their edicts upon entering the provinces.

[77] Above, in bk. 5, chap. 19. See also bks. 2, 3, 4, and 5.

But while Rome paid taxes painlessly or paid none at all,[78] the provinces were ravaged by the knights, who were the tax-collectors for the republic. We have spoken of their harassments, and all history is full of them.

"All Asia awaits me as its liberator," said Mithridates,[79] "the pillages of the pronconsuls,[80] the exactions[i] of the men of public business,[j] and the calumny of their judgments[81] have aroused such great hatred for the Romans."

This is why the force of the provinces added nothing to the force of the republic and, on the contrary, only weakened it. This is why the provinces regarded the loss of liberty in Rome as the period of the establishment of their own.

[78] After the conquest of Macedonia, the taxing ceased in Rome.

[79] Harangue taken from Trogus Pompeius and related by Justin [*Epitoma historiarum Philippicarum*], bk. 38 [38.7.8].

[80] See [Cicero] *The Orations against Verres* [the entire case].

[81] It is known that it was the tribunal of Varus that made the Germans rebel [see bk. 19, n. 1].

[i] *exécutions* in text.

[j] *gens d'affaires* are not strictly "businessmen" here. *Affaires* usually means "public business."

CHAPTER 20

End of this book

I should like to seek out in all the moderate governments we know the distribution of the three powers and calculate thereupon the degrees of liberty each one of them can enjoy. But one must not always so exhaust a subject that one leaves nothing for the reader to do. It is not a question of making him read but of making him think.

BOOK 12

On the laws that form political liberty in relation to the citizen

CHAPTER I

The idea of this book

It is not enough to treat political liberty in its relation to the constitution; it must be shown in its relation to the citizen.

I have said that, in the former instance, liberty is formed by a certain distribution of the three powers, but in the latter it must be considered with a different idea in view. It consists in security or in one's opinion of one's security.

It can happen that the constitution is free and that the citizen is not. The citizen can be free and the constitution not. In these instances, the constitution will be free by right and not in fact; the citizen will be free in fact and not by right.

Only the disposition of the laws, and especially of the fundamental laws, forms liberty in its relation to the constitution. But, in the relation to the citizen, mores, manners, and received examples can give rise to it and certain civil laws can favor it, as we shall see in the present book.

Further, as in most states liberty is more hampered, countered, or beaten down than is required by their constitutions, it is well to speak of the particular laws that, in each constitution, can aid or run counter to the principle of the liberty of which each government can admit.

CHAPTER 2

On the liberty of the citizen

Philosophical liberty consists in the exercise of one's will or, at least (if all systems must be mentioned), in one's opinion that one exerts one's will. Political liberty consists in security or, at least, in the opinion one has of one's security.

This *security* is never more attacked than by public or private accusations. Therefore, the citizen's liberty depends principally on the goodness of the criminal laws.

Criminal laws were not perfected all at once. In the very places one most sought liberty, one did not always find it. Aristotle[1] tells us that at Cumae, the accuser's relatives could be witnesses. Under the Roman kings, the law was so imperfect that Servius Tullius pronounced sentence against the children of Ancus Martius, accused of having assassinated his father-in-law, the king.[2] Under the first kings of the Franks, Clotaire made a law[3] that an accused man could not be condemned without being heard, which proves that there was an opposite practice in some particular case or among some barbarian people. It was Charondas who introduced judgments against false testimonies.[4] When the innocence of the citizens is not secure, neither is liberty.

The knowledge already acquired in some countries and yet to be acquired in others, concerning the surest rules one can observe in criminal judgments, is of more concern to mankind than anything else in the world.

Liberty can be founded only on the practice of this knowledge, and in a state that had the best possible laws in regard to it, a man against whom proceedings had been brought and who was to be hung the next day would be freer than is a pasha in Turkey.

[1] [Aristotle] *Pol.*, bk. 2 [1269a1–1269a3].
[2] Tarquinius Priscus. See Dion. Hal. [*Ant. Rom.*], bk. 4 [4.5.3].
[3] In the year 560 [*CRF* 8.3].
[4] Aristotle, *Pol.*, bk. 2, chap. 12 [1247b5–8]. He gave his laws at Thurium in the 84th Olympiad [444 B.C.].

CHAPTER 3

Continuation of the same subject

The laws that send a man to his death on the deposition of a single witness are fatal to liberty. Reason requires two, because a witness who affirms and an accused who denies produce a division, and there must be a third for a decision.

The Greeks[5] and the Romans[6] required one additional voice to condemn. Our French laws require two. The Greeks claimed that their usage had been established by the gods,[7] but ours was.

[5] See [Aelius] Aristides, *Oratio in Minervam* [Athena, 37(2).17].
[6] Dion. Hal. [*Ant. Rom.*]., bk. 7 [7.64.6], on the judgment of Coriolanus.
[7] *Minervae calculus*: vote of Minerva.

CHAPTER 4

That liberty is favored by the nature of penalties, and by their proportion

It is the triumph of liberty when criminal laws draw each penalty from the particular nature of the crime. All arbitrariness ends; the penalty does not ensue from the legislator's capriciousness but from the nature of the thing, and man does not do violence to man.

There are four sorts of crimes. Those of the first kind run counter to religion; those of the second, to mores; those of the third, to tranquility; those of the fourth, to the security of the citizens. The penalties inflicted should derive from the nature of each of these kinds.

I include in the class of crimes concerning religion only those that attack it directly, such as all cases of simple sacrilege. For crimes of disturbing the exercise of religion are of the nature of those that run counter to the tranquility or the security of the citizens and should be shifted to these classes.

In order for the penalty against simple sacrilege to be drawn from the nature[8] of the thing, it should consist in the deprivation of all the

[8] St. Louis made such exaggerated laws against those who swore that the Pope felt obliged to caution him about it. This prince moderated his zeal and softened his laws. See his

advantages given by religion: expulsion from the temples; deprivation of the society of the faithful for a time or forever; shunning the presence of the sacrilegious; execration, detestation, and exorcism.

In the things that disturb the tranquility or security of the state, hidden actions are a concern[a] of human justice. But in those that wound the divinity, where there is no public action, there is no criminal matter; it is all between the man and god who knows the measure and the time of his vengeance. For if the magistrate, confusing things, even searches out hidden sacrilege, he brings an inquisition to a kind of action where it is not necessary; he destroys the liberty of citizens by arming against them the zeal of both timid and brash consciences.

The ill came from the idea that the divinity must be avenged. But one must make divinity honored, and one must never avenge it. Indeed, if one were guided by the latter idea, where would punishments end? If men's laws are to avenge an infinite being, they will be ruled by his infinity and not by the weakness, ignorance, and caprice of human nature.

An historian of Provence[9] reports a fact that paints very clearly for us what this idea of avenging the divinity can produce in weak spirits. A Jew, accused of having blasphemed the Holy Virgin, was condemned to be flayed. Masked knights with knives in their hands mounted the scaffold and drove away the executioner in order to avenge the honor of the Holy Virgin themselves . . . I certainly do not want to anticipate the reader's reflections.

The second class is of crimes against the mores: these are the violation of public or individual continence, that is, of the police concerning how one should enjoy the pleasures associated with the use of one's senses and with corporal union. The penalties for these crimes should also be drawn from the nature of the thing. Deprivation of the advantages that society has attached to the purity of mores, fines, shame, the constraint to hide oneself, public infamy, and expulsion from the town and from society; finally, all the penalties within the correctional jurisdiction suffice to repress the temerity of the two sexes.

Ordinances. [*Recueil général des anciennes lois françaises. Capétiens*, 216.2; see also 218.1; 1, 341–342, 346].

[9]Father Bougerel.

[a]*ressort*. We usually translate *ressort* as "spring." See also note [c], bk. 19.

Indeed, these things are founded less on wickedness than on forgetting or despising oneself.

Here it is a question only of crimes that involve mores alone, not of those that also run counter to public security, such as kidnapping and rape, which are of the fourth kind.

The crimes of the third class are those that run counter to the citizens' tranquility, and the penalties for them should be drawn from the nature of the thing and relate to that tranquility, such as deprivation, exile, corrections, and other penalties that restore men's troubled spirits and return them to the established order.

I restrict crimes against tranquility to the things that are a simple breach of police; the ones that, while disturbing tranquility, attack security at the same time, should be put in the fourth class.

The penalties for these last crimes are what are called punishments.[b] They are a kind of retaliation, which causes the society to refuse to give security to a citizen who has deprived or has wanted to deprive another of it. This penalty is derived from the nature of the thing and is drawn from reason and from the sources of good and evil. A citizen deserves death when he has violated security so far as to take or to attempt to take a life. The death penalty is the remedy, as it were, for a sick society. When one violates security with respect to goods there can be reasons for the penalty to be capital; but it would perhaps be preferable, and it would be more natural, if the penalty for crimes committed against the security of goods were punished by the loss of goods. And that ought to be so, if fortunes were common or equal; but as those who have no goods more readily attack the goods of others, the corporal penalty has had to replace the pecuniary penalty.

All that I say is drawn from nature and is quite favorable to the citizen's liberty.

[b]*peines* is translated "penalties," and *supplices*, "punishments."

CHAPTER 5

On certain accusations in particular need of moderation and prudence

Important maxim: one must be very circumspect in the pursuit of magic and of heresy. Accusation of these two crimes can offend liberty in the extreme and be the source of infinite tyrannies if the legislator does not know how to limit it. For, as it does not bear directly on the actions of a citizen, but rather on the idea one has of his character, the accusation becomes dangerous in proportion to the people's ignorance, and from that time, a citizen is always in danger because the best conduct in the world, the purest morality, and the practice of all one's duties do not guarantee one from being suspected of these crimes.

Under Manuel Comnenus, the *protestator*[10] was accused of conspiring against the emperor and of using to this end certain secrets that made men invisible. It is said, in the *Life* of this emperor,[11] that Aaron was caught reading a book of Solomon, and that by reading it legions of demons would appear. Now, by supposing a power in magic that can arm hell and by starting from this, he whom one calls a magician is considered the man in the world most likely to disturb and overthrow society, and one is drawn to punish him immeasurably.

Indignation grows when one includes in magic the power to destroy religion. The history of Constantinople[12] tells us that, when a bishop had the revelation that a miracle had ceased because of the magic of a certain individual, that person and his son were condemned to death. On how many prodigious things did this crime not depend? That it should not be rare for there to be revelations; that this bishop had had one; that it was true; that there had been a miracle; that this miracle had ceased; that there is magic; that magic can overturn religion; that this individual was a magician; finally, that he had done this act of magic.

The emperor Theodore Lascaris attributed his illness to magic. Those who were accused of it had no other recourse but to handle a hot iron without burning themselves. It would have been a good thing,

[10] Nicetas Acominatus [*Historia*], *De Manuele Commeno*, bk. 4 [4.7; pp. 146–147; 1975 edn; 190–192, Bekker].

[11] Nicetas Acominatus [*Historia*], *De Manuele Commeno*, bk. 4 [4.7; pp. 146–147; 1975 edn.; 190–192, Bekker].

[12] [Simocatta] Theophylactus, *Historiarum*, chap. 11 [1.11; pp. 53–57, Bekker edn].

among these Greeks, to be a magician in order to vindicate oneself of the accusation of magic. Such was the excess of their ignorance that, to the most dubious crime in the world, they joined the most dubious proofs.

Under the reign of Philip the Tall, the Jews were run out of France, having been accused of allowing lepers to pollute the wells. This absurd accusation certainly should cast doubt on all accusations founded on public hatred.

I have not said here that heresy must not be punished; I say that one must be very circumspect in punishing it.

CHAPTER 6

On the crime against nature

Please god that I may not diminish the horror that one has for a crime that religion, morality, and policy condemn in turn. It would have to be proscribed if it did no more than give to one sex the weaknesses of the other and prepare for an infamous old age by a shameful youth. What I shall say will leave it all of its stigma and will bear only on the tyranny that can take an unfair advantage of even the horror in which it should be held.

As it is in the nature of this crime to be hidden, legislators have often punished it on the deposition of a child. This opened wide the door to calumny. "Justinian," says Procopius,[13] "published a law against this crime; he made inquiries about those who were guilty of it, not only after the law was made but before. The deposition of a witness, sometimes a child, sometimes a slave, sufficed, especially against the rich and those who were of the faction of the *Greens*."

It is singular that among ourselves three crimes, magic, heresy, and the crime against nature, of which it can be proved that the first does not exist, that the second is susceptible to infinite distinctions, interpretations and limitations, and that the third is often hidden, were all three punished by the penalty of burning.

I shall assert that the crime against nature will not make much progress in a society unless the people are also inclined to it by some

[13] [Procopius] *Anecdota sive Historia arcana* [19.11].

custom, as among the Greeks, where the young people performed all their exercises naked, as among ourselves where education at home is no longer the usage, as among the Asians where some individuals have a large number of wives whom they scorn while others can have none. Do not clear the way for this crime, let it be proscribed by an exact police, as are all the violations of mores, and one will immediately see nature either defend her rights or take them back. Gentle, pleasing, charming, nature has scattered pleasures with a liberal hand; and by overwhelming us with delights, she prepares us with our children through whom we are born again, as it were, for satisfactions greater even than those delights.

CHAPTER 7

On the crime of high treason

The laws of China decide that whoever lacks respect for the emperor should be punished by death. As they do not define what lack of respect is, anything can furnish a pretext for taking the life of whomever one wants and for exterminating whatever family one wants.

Two persons charged with writing the court gazette noted some circumstances about a deed which were found not to be true, and, as lying in a court gazette was said to show lack of respect for the court, they were put to death.[14] When a prince of the blood inadvertently placed a note on a day-book signed with the red paintbrush of the emperor, it was decided that he had shown a lack of respect for the emperor, which brought against this family one of the most terrible persecutions of which history has ever spoken.[15]

Vagueness in the crime of high treason is enough to make government degenerate into despotism. I shall treat the subject at length in the Book "On the composition of the laws."[c]

[14] Father [Jean Baptiste] du Halde [*Description de l'Empire de la Chine*, "De la forme du gouvernement"], vol. 1, p. 43 [2.50 H; 2.43 P; 2.71 L].

[15] Letters of Father Parennin in *Lettres édifiantes et curieuses* [Peking, September 26, 1727; 19, 156–158; 1729 edn].

[c] Book 29.

CHAPTER 8

On the wrong application of the name of crime of sacrilege and high treason

It is also a violent abuse to give the name of crime of high treason to an action which is not one. A law of the emperors[16] pursued as sacrilegious those who called the prince's judgment into question and doubted the merit of those he had chosen for certain employments.[17] The cabinet and the favorites established this crime. Another law declared that those who made an attempt on the prince's ministers and officers were guilty of the crime of treason, as if they had made an attempt on the prince himself.[18] We owe this law to two princes[19] whose weakness is famous in history, two princes who were led by their ministers as flocks are led by shepherds, two princes, slaves in the palace, children in the council, strangers in the armies, who preserved the empire only because they gave it away every day. Several of these favorites conspired against their emperors. They did more: they conspired against the empire, they summoned the barbarians, and when one wanted to check them, the state was so weak that it had to violate their law and run the risk of committing the crime of treason in order to punish them.

Yet the Judge-Advocate for M. de Cinq-Mars[20] relied upon this law when, wanting to prove the latter guilty of the crime of treason for attempting to dismiss Cardinal Richelieu from matters of public business, he said, "By the constitutions of the emperors the crime touching the person of the prince's ministers is counted of the same weight as one affecting the prince's person. A minister serves both his prince and his state; if he is removed, it is as if the former were deprived of an arm[21] and the latter of a part of its power." If servitude herself arrived on earth, she would not speak otherwise.

[16] Gratian, Valentinian, and Theodosius. It is the third one of the *Code* [*Corpus Juris Civilis, Code* 9.29.2(3)]; *de crimine sacrilegii.*

[17] "It is the equivalent of sacrilege to doubt whether he whom the Emperor has chosen shall be worthy" [L.]. Ibid. [*Corpus Juris Civilis, Code* 9.29.2(3); *de crimine sacrilegii*]. This law was a model for Roger's law in the Institutions of Naples, tit. 4 [*Liber Augustalis or The Constitutions of Melfi*, 1231; 1.4].

[18] Law 5 [*Corpus Juris Civilis, Code* 9.8.5]; *ad legem Juliam maiestatis.*

[19] Arcadius and Honorius.

[20] [Claude de Bourdeille, Comte de] Montresor, *Memoirs*, vol. 1 [1, 238–239; 1723 edn].

[21] "For they themselves are a part of our body" [L.]. Same law in the *Code* [*Corpus Juris Civilis, Code* 9.8.5]; *ad legem Juliam maiestatis.*

Another law of Valentinian, Theodosius, and Arcadius[22] declares counterfeiters guilty of the crime of high treason. But does that not confuse ideas about things? Does not giving the name of high treason to another crime diminish the horror of the crime of high treason?

[22] It is Law 9 in the *Codex Theodosianus*; *de falsa moneta* [9.21.9].

CHAPTER 9

Continuation of the same subject

When Paulinus sent word to the Emperor Alexander that "he was preparing to pursue as a traitor a judge who had pronounced against his orders," the emperor answered him that, "in a century like this, indirect crimes of high treason had no place."[23]

When Faustinianus wrote to the same emperor that, having sworn on the life of the prince that he would never pardon his slave, he was obliged to keep his anger alive in order not to make himself guilty of the crime of high treason, the emperor answered him, "Your terror has been empty[24] and you do not know my maxims."

A senatus-consult[25] ordered that anyone who had melted down the rejected statues of the emperor would not be at all guilty of high treason. The emperors Severus and Antoninus wrote to Pontius[26] that one who sold unconsecrated statues of the emperor would not fall under the crime of high treason. The same emperors wrote to Julius Cassianus that one who chanced to throw a rock at a statue of the emperor should not be pursued as a traitor.[27] The Julian law required these sorts of modifications, for it had rendered guilty of treason not only those who melted down the statues of the emperors but those who committed some similar action,[28] making this crime arbitrary. Once

[23] "In my generation, the accusation of high treason for a variety of causes shall cease" [L.]. Law 1, *Code* [*Corpus Juris Civilis, Code* 9.8.1]; *ad legem Juliam maiestatis*.

[24] "You conceive my bent of mind with unsuitable anxiety" [L.]. [*Corpus Juris Civilis, Code* 9.8.2]; *ad legem Juliam maiestatis*.

[25] See Law 4, para. 1, *Digest* [*Corpus Juris Civilis, Digest* 48.4.4.1]; *ad legem Juliam maiestatis*.

[26] See Law 5, para. 1, ibid. [*Corpus Juris Civilis, Digest* 48.4.5.2; *ad legem Juliam maiestatis*].

[27] Ibid., para. 1 [*Corpus Juris Civilis, Digest* 48.4.5.1; *ad legem Juliam maiestatis*].

[28] "Those who might commit some similar thing or another" [L.]. [*Corpus Juris Civilis, Digest* 48.4.6.1]; *ad legem Juliam maiestatis*, Law 6.

many crimes of high treason had been established, one necessarily had to distinguish among these crimes. Thus the jurist Ulpian, after saying that the accusation of the crime of high treason did not cease on the death of the guilty parties, added that this did not extend to all[29] the crimes of high treason as established by the Julian law, but only to the one that included an attempt on the empire or on the emperor's life.

[29] [*Corpus Juris Civilis, Digest* 48.4.11]; *ad legem Juliam maiestatis*, in the last law.

CHAPTER 10

Continuation of the same subject

A law of England, passed under Henry VIII, declared that all those who predicted the king's death were guilty of high treason. This law was very vague. Despotism is so terrible that it even turns against those who exercise it. In the last illness of this king, the doctors never dared to say that he was in danger, and no doubt they acted accordingly.[30]

[30] Gilbert Burnet, *The History of the Reformation of the Church of England* [pt. 1, bk. 3; 1547; 1, 548; 1969 edn].

CHAPTER 11

On thoughts

A certain Marsyas dreamed he cut the throat of Dionysius.[31] Dionysius had him put to death, saying that Marsyas would not have dreamed it at night if he had not thought it during the day. This was a great tyranny; for, even if he had thought it, he had not attempted it.[32] Laws are charged with punishing only external actions.

[31] Plutarch [*Vit.*], *Dion* [9.5].

[32] Thought must be joined to some sort of action.

CHAPTER 12

On indiscreet speech

Nothing makes the crime of high treason more arbitrary than when indiscreet speech becomes its material. Discourse is so subject to interpretation, there is so much difference between indiscretion and malice and so little in the expressions they use, that the law can scarcely subject speech to a capital penalty, unless it declares explicitly which speech is subject to it.[33]

Speech does not form a *corpus delicti*: it remains only an idea. Most frequently it has no meaning in itself but rather in the tone in which it is spoken. Often when repeating the same words, one does not express the same meaning; the meaning depends on the link the words have with other things. Silence sometimes expresses more than any speech. Nothing is so equivocal. How, then, can one make speech a crime of high treason? Wherever this law is established, not only is there no longer liberty, there is not even its shadow.

In the manifesto of the late Czarina against the family Olguruki,[34] one prince of this family is condemned to death for speaking indecently of her person and another for interpreting spitefully her wise arrangements for the empire and for offending her sacred person by disrespectful speech.

I do not intend to diminish the indignation one should have against those who want to stigmatize the glory of their prince, but I do say that if one wants to moderate despotism, punishing with a simple correction will suit these occasions better than an accusation of high treason, which is always terrible, even to the innocent.[35]

Actionable acts are not an everyday occurrence; they may be observed by many people: a false accusation over facts can easily be clarified. The words that are joined to an act take on the nature of that action. Thus a man who goes into the public square to exhort the subjects to revolt becomes guilty of high treason, because the speech is

[33] "It should not be punished as a crime unless it be set down in the letter of the law or established by examples in the law" [L.], says Moestinus in Law 7, para. 3 of the *Digest* [*Corpus Juris Civilis, Digest* 48.4.7.3]; *ad legem Juliam maiestatis.*

[34] In 1740.

[35] "It is in no way easy to interpret the deceits of language" [L.], Modestinus, in Law 7, para. 3 of the *Digest* [*Corpus Juris Civilis, Digest* 48.4.7.3]; *ad legem Juliam maiestatis.*

joined to the act and participates in it. It is not speech that is punished but an act committed in which speech is used. Speech becomes criminal only when it prepares, when it accompanies, or when it follows a criminal act. Everything is turned upside down if speech is made a capital crime instead of being regarded as the sign of a capital crime.

The emperors Theodosius, Arcadius, and Honorius wrote to Rufinus, the praetorian prefect: "If someone speaks ill of our person or our government, we do not want to punish him;[36] if he has spoken frivolously, he must be scorned; if it is madness, he must be pitied; if it is an insult, he must be pardoned. Thus, looking at the thing as a whole, you will inform us of it so that we may judge speeches by the persons and weigh carefully whether we should subject them to judgment or ignore them."

[36] "If this should proceed from levity, it deserves contempt; if from insanity, it is most deserving of pity; if with intent to injure, it ought to be pardoned" [L.]; a single law in the *Code* [*Corpus Juris Civilis, Code* 9.7.1]; *si quis imperatori maledixerit.*

CHAPTER 13

On writings

Writings contain something more permanent than speech, but when they do not prepare the way for high treason, they are not material to the crime of high treason.

Nevertheless Augustus and Tiberius appended to writings the penalty for this crime:[37] Augustus, when certain things were written against illustrious men and women; Tiberius, because of those he believed written against himself. Nothing was more fatal to Roman liberty. Cremutius Cordus was accused because in his annals he had called Cassius the last of the Romans.[38]

Satirical writings are scarcely known in despotic states, where dejection on the one hand and ignorance on the other produce neither the talent nor the will to write them. In democracy, they are not prevented, for the very reason that they are prohibited in the govern-

[37] Tacitus, *Annales*, bk. 1 [1.72.3–4]. That continued under the subsequent reigns. See the first law of the *Code* [*Corpus Juris Civilis, Code* 9.36.2]; *de famosis libellis.*

[38] Idem, bk. 4 [Tacitus, *Annales*, 4.34].

ment of one alone. As they are usually composed against powerful people, they flatter the spitefulness of the people who govern in a democracy. In a monarchy, they are prohibited, but they have been made an object of police rather than of crime.[d] They can amuse the general spitefulness, console malcontents, reduce envy of those in high positions, give the people the patience to suffer, and make them laugh about their sufferings.

Aristocracy is the government that most proscribes satirical works. Magistrates there are little sovereigns who are not big enough to scorn insults. If in monarchy some barb is thrown against the monarch, he is so high that the barb does not reach him. An aristocratic lord is pierced through and through. Thus, the decemvirs, who formed an aristocracy, punished satirical writings with death.[39]

[39] The Law of Twelve Tables.

[d] See 26.24 and note [c] for Montesquieu's explanation of the meaning of *police*.

CHAPTER 14

The violation of modesty in punishing crimes

Rules of modesty are observed among almost all the nations of the world; it would be absurd to violate them in punishing crimes, when its purpose should always be the reestablishment of order.

Did those in the East, who exposed women to elephants trained for an abominable kind of punishment, want to make the law violate the law?

An old usage of the Romans forbade putting to death girls who were not nubile. Tiberius hit upon the expedient of having them raped by the executioner before sending them to their punishment;[40] a crafty and cruel tyrant, he destroyed mores in order to preserve customs.

When the Japanese magistracy had naked women exposed in public squares and forced them to walk like beasts, it made modesty tremble;[41]

[40] Suetonius [*Vitae duodecim Caesarum*], *Tiberius* [61.5].

[41] *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 5, pt. 2 [Reyer Gysbertsz, "Histoire d'une persécution"; 5, 425; 1706 edn; 5, 496; 1725 edn].

but when it wanted to compel a mother..., when it wanted to compel a son..., I cannot go on, it made even nature tremble.[42]

[42] Ibid., p. 496 [*Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes* Reyer Gysbertsz, "Histoire d'une persécution"; 5, 425–426; 1706 edn; 5, 496; 1725 edn].

CHAPTER 15

On freeing the slave in order to accuse the master

Augustus established that the slaves of those who had conspired against him would be sold to the public, so that they could make depositions against their masters.[43] Nothing should be neglected that leads to the discovery of a serious crime. Thus, in a state where there are slaves, it is natural for them to be informers, but they cannot be witnesses.

Vindex denounced the conspiracy in support of Tarquin, but he was not a witness against the children of Brutus. To give liberty to one who had rendered such a great service to his homeland was just, but liberty was not given to him so that he would render this service to his homeland.

Thus, the emperor Tacitus ordered that slaves would not be witnesses against their master, even in the crime of high treason,[44] a law that was not put into Justinian's compilation.

[43] Cass. Dio [*Historia Romana*, 55.5.4], in Xiphilinus.

[44] Flavius Vopiscus [*Tacitus*, 27.9.4].

CHAPTER 16

Slander in the crime of high treason

One must be just to the Caesars: they were not the first to imagine the sad laws they made. It was Sulla[45] who taught them that slanderers must not be punished. Soon one went so far as to reward them.[46]

[45] Sulla made a law of high treason, mentioned in Cicero's orations, *Pro Cluentio*, art. 3 [24–25, 94–97, 99]; *In Pisonem*, art. 21 [21.50]; *In Verrem*, 2nd art. 5 [2.1.5.12–13]; *Epistolae ad familiares*, bk. 3, letter 2 [3.11.1–3]. Caesar and Augustus inserted them in the Julian laws; others added to them.

[46] "The one who was the more distinguished informer would achieve more honors; it was as

if he were a sacred personage" [L.]. Tacitus [*Annales* 4.36]. [M. has cited the passage incorrectly and is perhaps quoting from memory.]

CHAPTER 17

On revealing conspiracies

"If thy brother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, which is as thine own soul, entice thee secretly, saying: 'Let us go to other gods,' thou shalt stone him; thine hand shall be first upon him, and afterwards the hand of all the people." This law of Deuteronomy[47] cannot be a civil law among most of the peoples that we know because it would open the door to all crimes.

The law in many states that ordered that, on penalty of death, one reveal even the conspiracies in which one did not have a hand, is scarcely less harsh. It is very suitable to restrict this law when it is carried into a monarchical government.

It should be applied there in all its severity only to the crime of high treason in the first degree. In such states it is very important not to confuse the different degrees of this crime.

In Japan, where the laws upset all ideas of human reason, the failure to reveal a crime is considered a crime in the most ordinary cases.

An account[48] tells us of two young ladies who were shut up in a box studded with nails until they died; the one, for having had some intrigue of gallantry; the other, for not having revealed it.

[47] [Deuteronomy] chap. 13, vv. 6–9 [M. quotes part of vv. 6 and 9].

[48] *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, bk. 5, pt. 2, p. 423 ["Voiage de Hagenaar aux Indes Orientales"; 5, 347; 1706 edn; 5, 423; 1725 edn].

CHAPTER 18

How dangerous it is in republics to punish excessively the crime of high treason

When a republic has destroyed those who want to upset it, one must hasten to put an end to vengeances, penalties, and even rewards.

One cannot inflict great punishments, and consequently, make great

changes, without putting a great power into the hands of a few citizens. It is better then, in this case, to pardon many than to punish many, to exile few than to exile many, to leave men their goods than to multiply confiscations. On the pretext of avenging the republic, one would establish the tyranny of the avengers. It is not a question of destroying the one who dominates but of destroying domination. One must return as quickly as possible to the ordinary pace of government where the laws protect all and are armed against no one.

The Greeks put no limits to the vengeances they wreaked on tyrants or on those they suspected of being tyrants. They put children to death,[49] sometimes five of the closest relatives.[50] They drove out an infinite number of families. Their republics were shaken by this; exile and the return of the exiled were always periods marking a change in the constitution.

The Romans were wiser. When Cassius was condemned for aspiring to tyranny, the question of putting his children to death was raised; his children were not condemned to any penalty. "Those who wanted to change this law at the end of the war with the Marsi and of the civil war and to exclude from public offices the children of those proscribed by Sulla, are certainly criminal," says Dionysius of Halicarnassus.[51]

In the wars of Marius and Sulla one sees the extent to which the souls of the Romans had gradually become depraved. Things were so lamentable that one believed they would not be seen again. But under the Triumvirate one wanted to be more cruel and appear less so; the sophisms that were used by cruelty are distressing to see. The formula for proscriptions is found in Appian.[52] You would say that one has there no other purpose than the good of the republic, so coolly does one speak there, so many advantages does one show, so preferable to others are the means one takes, so secure will the rich be, so tranquil will the common people be, so much does one fear to put the citizen's lives in danger, so much does one want to pacify the soldiers, finally, so happy will one be.[53]

Rome was drowned in blood when Lepidus triumphed over Spain,

[49] Dion. Hal., *Ant. Rom.*, bk. 8 [8.80.3].

[50] "The tyrant being killed, a magistrate shall slay his five closest relatives" [L.] [Cicero] *De inventione*, bk. 2 [2.49.144].

[51] [Dion. Hal. *Ant. Rom.*] bk. 8, p. 547 [8.80.2].

[52] [Appian] *The Civil Wars*, bk. 4 [4.2.11].

[53] "May it be fortunate and auspicious with you!" [L.] [Appian, *The Civil Wars* 4.2.11].

and, by an unexampled absurdity, he ordered the people to rejoice over the triumph, on penalty of proscription.[54]

[54]"Let this day be given over to feasts and sacrifices; those who do otherwise, let them be among the proscribed" [L.]. [Appian, *The Civil Wars* 4.5.31].

CHAPTER 19

How the usage of liberty is suspended in a republic

There are, in the states where one sets the most store by liberty, laws that violate it for a single person in order to keep it for all. Such are what are called *bills of attainder*[55] in England. They are related to those laws of Athens that were enacted against an individual[56] provided they were made by the vote of six thousand citizens. They are related to those laws made in Rome against individual citizens, which were called *privileges*.[57] They were made only in the great estates of the people. But, however the people made them, Cicero wanted them abolished, because the force of the law consists only in its being enacted for everyone.[58] I admit, however, that the usage of the freest peoples that ever lived on earth makes me believe that there are cases where a veil has to be drawn, for a moment, over liberty, as one hides the statues of the gods.

[55]It is not enough, in the tribunals of the kingdom, for there to be a piece of evidence that convinces the judges; this piece of evidence must also be formal, that is, legal; and the law requires there to be two witnesses against the accused; an additional piece of evidence would not suffice. Now if a man, presumed guilty of what is called a high crime, had found a way to keep the witnesses from appearing so that it was impossible to condemn him under the law, one could bring a special bill of attainder against him, that is, make a singular law concerning his person. One proceeds as with any other bill: it must pass the two Houses and the king must give his consent, otherwise there is no *bill*, that is, no judgment. The accused can have his advocates speak against the *bill*, and one can speak for the *bill* in the House.

[56]"A law concerning a single individual ought not to be proposed unless six thousand have considered it" [L.] Andocides, *Orationes, De mysteriis* [87]. This is ostracism.

[57]"Proposed concerning private individuals" [L.]. Cicero, *De legibus*, bk. 3 [3.19.44–45].

[58]"A decree and law over all" [L.]. Cicero, ibid. [*De legibus* 3.19.44].

CHAPTER 20

On laws favorable to the citizen's liberty in the republic

It often happens in popular states that accusations are made in public and any man is permitted to indict whomever he wants. This has brought about the establishment of laws proper to the defense of the innocence of the citizens. In Athens, the accuser who did not get a fifth of the votes for his side paid a fine of a thousand drachmas. Aeschines, who had accused Ctesiphon, was condemned for this.[59] In Rome, the unjust accuser was branded with infamy,[60] and the letter "K" was stamped on his forehead. Guard was kept on the accuser so that he would not be in a position to corrupt the judges or witnesses.[61]

I have already spoken of that Athenian and Roman law that permitted the one indicted to go into exile before the judgment.

[59]See [Flavius] Philostratus, *Vitae sophistarum, Aeschines*, bk. 1 [510, Olearius]. See also Plutarch [*Moralia. Vitae decem oratorum* 840d–e] and Photius [*Bibliotheca* 61, "Aeschines"; 20a18–30].

[60]By the Remnian law.

[61]Plutarch [*Moralia*], *De capienda ex inimicis utilitate* [91d–e].

CHAPTER 21

On the cruelty of laws concerning debtors in a republic

One citizen has already gained a great superiority over another citizen by lending silver that the latter had borrowed only to disburse and that, in consequence, he no longer has. What will happen in a republic, if the laws increase this servitude still more?

In Athens and in Rome,[62] it was at first permitted to sell debtors who were not in a position to pay. Solon corrected this usage in Athens;[63] he ordered that no one would be obligated by his person for civil debts. But the decemvirs[64] did not similarly reform the Roman usage, and although they had Solon's regulation before their eyes, they refused to

[62]Many sold their children to pay their debts. Plutarch [*Vit.*], *Solon* [13.3].

[63]Ibid. [Plutarch, *Vit., Solon* 15.3].

[64]In history it appears that this usage was established among the Romans before the Law of Twelve Tables. Livy, decade 1, bk. 2 [2.23–24].

follow it. This is not the only place in the Law of Twelve Tables where one sees that the design of the decemvirs ran counter to the spirit of democracy.

The cruel laws concerning debtors often endangered the Roman republic. A man covered with sores escaped from the house of his creditor and appeared in the square.[65] The people were moved by this spectacle. Other citizens left their prisons when their creditors no longer dared hold them. Promises were made, but they were broken: the people withdrew to the Mons Sacer. The people gained, instead of the abrogation of these laws, a magistrate to defend them. One was moving away from anarchy; one risked falling into tyranny. Manlius, in order to make himself popular, was going to take from the hands of their creditors the citizens who had been reduced to slavery.[66] One prevailed against his designs, but the evil remained. Particular laws facilitated payments by debtors,[67] and in Roman year 428 [328 B.C.], the consuls proposed a law[68] that took away the creditors' right to hold debtors in servitude in their houses.[69] A usurer named Papirius had wanted to corrupt the modesty of a young man named Publius whom he kept in irons. The crime of Sextus gave Rome political liberty; that of Papirius gave it civil liberty.

It was Rome's fate that new crimes confirmed the liberty that old crimes had procured for it. The attempt of Appius on Virginia revived in the people the horror of tyrants inspired in them by Lucretia's misfortune. Thirty-seven years[70] after the crime of the infamous Papirius, a similar crime[71] made the people withdraw to the Janiculum[72] and renewed the force of the law made for the security of debtors.

[65] Dion. Hal., *Ant. Rom.*, bk. 6 [6.26].

[66] Plutarch [*Vit.*], *Furius Camillus* [36.3–4].

[67] See below, bk. 22, chap. 22.

[68] One hundred and twenty years after the Law of Twelve Tables. "For the Roman plebeians, this year was like another beginning of liberty because they ceased to be enslaved for debts" [L.]. Livy, bk. 8 [8.28.1].

[69] "The property of the debtors but not their bodies would be held liable" [L.]. Ibid. [Livy 8.28.9].

[70] In Roman year 465 [289 B.C.].

[71] That of Plautius, who attacked the modesty of Veturius. Valerius Maximus [*Factorum et dictorum memorabilium*], bk. 6, art. 9 [6.1.9]. One should not confuse these two events; they are neither the same persons nor the same times.

[72] See a fragment of Dion. Hal., in [*Ant. Rom.* 16.5 (9)], *Extracts of Virtues and Vices*; Livy, *Epitome*, bk. 11; and Johann Freinsheim [*Supplementorum Livianorum*], bk. 11 [11.25–26].

Subsequently, more creditors were pursued by debtors for violating the laws made against usurers than debtors were pursued for not having paid their debts.

CHAPTER 22

On things that attack liberty in a monarchy

The least useful thing in the world to the prince has often weakened liberty in monarchies: the commissioners sometimes named to judge an individual.

The prince has so little use for commissioners that it is not worthwhile for him to change the order of things for their sake. It is morally certain that he has more of the spirit of integrity and justice than his commissioners, who always believe themselves sufficiently justified by orders, by a hidden interest of the state, by having been chosen, and even by their fears.

Under Henry VIII, when a peer was tried, he was to be judged by commissioners drawn from the House of Lords; with this method one put to death all the peers one wanted.

CHAPTER 23

On spies in a monarchy

Must there be spies in a monarchy? It is not the ordinary practice of good princes. When a man is faithful to the laws, he has satisfied what he owes to the prince. He must at least have his house as an asylum and be secure about the rest of his conduct. Spying would perhaps be tolerable if it could be exercised by honest people, but the necessary infamy of the person can make the thing be judged infamous. A prince should act toward his subjects with candor, frankness, and trust. He who has so many anxieties, suspicions, and fears, is an actor who plays his role awkwardly. When he sees that in general the laws are enforced and respected, he can judge himself secure. The general demeanor speaks to him for the demeanor of all the individuals. Let him have no

fear; he cannot believe how readily he is loved. Indeed, why would one not love him? He is the source of almost all the good that is done, and almost all punishing is the responsibility of the laws. He shows himself to the people only with a serene countenance; his very glory is communicated to us and his power sustains us. A proof that one loves him is that one trusts him; and what a minister refuses, one always imagines the prince would have granted. Even during public calamities, one does not accuse his person; one complains that he is unaware of them or that he is importuned by corrupt people: *If only the prince knew*! say the people. These words are a kind of invocation and a proof of their trust in him.

CHAPTER 24

On anonymous letters

The Tartars are obliged to put their name on their arrows, so that the hand from which they come can be known. When Philip of Macedonia was wounded at the siege of a town, one found on the javelin, *Aster gave this mortal blow to Philip*.[73] If those who accuse a man did it with a view to the public good, they would not accuse him before the prince, for he can easily be prejudiced; instead they would go before the magistrates, whose rules are fearsome only to slanderers. For if they do not want to leave the laws between themselves and the accused, it proves that they have cause to fear the laws, and the least penalty that might be inflicted on these men is not to believe them. One can pay attention to them only in cases that cannot tolerate the delays of ordinary justice and when it is a question of the prince's safety. In that instance, one can believe that the accuser has made an effort that loosened his tongue and made him talk. But in other cases one must say with the Emperor Constantius: "We cannot suspect a man who has no accuser although he does not lack enemies."[74]

[73] Plutarch, *Moralia, Parallela Graeca et Romana*, vol. 2, p. 487 [307d #8].
[74] Law 6, *Codex Theodosianus* [9.34.6]; *de famosis libellis*.

CHAPTER 25

On the manner of governing in monarchy

Royal authority is a great spring that should move easily and noiselessly. The Chinese praise one of their emperors who governed, they say, like the heavens, that is, by example.

There are cases when power should act to its full extent; there are cases when it should act within its limits. An administration is sublime if it is well aware what part of power, great or small, should be used in various circumstances.

In our monarchies, all felicity lies in the people's opinion of the gentleness of the government. An unskillful minister always wants to tell you that you are slaves. But, if that were so, he should seek to keep it from being known. He can say or write nothing to you, except that the prince is angry, that he is surprised, that he will restore order. In a certain way, command is easy: the prince must encourage and the laws must menace.[75]

[75] "Nerva [Nerva Traianus] eased the weight of empire." Tacitus [*Agricola* 3].

CHAPTER 26

That, in a monarchy, the prince should be accessible

This will be much better felt by contrasts. "Czar Peter I," says Lord Perry,[76] "has made a new ordinance that forbids presenting him with a request before presenting it twice to his officers. One can, in the case of denial of justice, present it to him the third time, but if he who presents it is wrong, he must lose his life. Since that time, no requests have been addressed to the czar."

[76] [John Perry] *The State of Russia under the Present Czar* (Paris, 1717), p. 173 [pp. 142–143; 1967 edn].

CHAPTER 27

On the mores of the monarch

The mores of the prince contribute as much to liberty as do the laws; like the laws, the prince can make beasts of men and men of beasts. If he loves free souls, he will have subjects; if he loves common souls, he will have slaves. Does he want to know the great art of ruling? Let him bring honor and virtue close to him, let him call forth personal merit. He can sometimes even cast his eyes toward the talented. Let him not fear his rivals, who are called men of merit; he is their equal once he loves them. Let him win the heart, but let him not capture the spirit. Let him make himself popular. He should be flattered by the love of the least of his subjects; they are all men. The people ask so little attention that it is just to grant it to them; the infinite distance between the sovereign and the people keeps them from disturbing him. Let him yield to prayers but be firm against demands, and let him know that his people benefit from his refusals as do his courtiers from his favors.

CHAPTER 28

On the regard monarchs owe their subjects

They must be extremely restrained in their banter. It flatters when it is moderate because it provides the means of becoming familiar, but a caustic banter is much less permissible to them than to the least of their subjects because they are the only ones who always wound mortally.

Even less should they conspicuously insult one of their subjects; they are established to pardon, to punish, never to insult.

When they insult their subjects, they treat them more cruelly than the Turk or the Muscovite treats his. When the latter insult someone, they humble and do not dishonor; but, as for monarchs, they both humble and dishonor.

Such is the prejudice of those of the East that they consider an affront by the prince to be a result of paternal goodness; and such is our way of thinking that we join to the bitter feeling resulting from this affront the despair of being unable to clear ourselves of it.

They should be charmed to have subjects whose honor is dearer to

them than life and is no less a motive for faithfulness than for courage.

One can recall misfortunes that have befallen princes as a result of insulting their subjects: the vengeances of Chaerea, of the eunuch Narses, and of the Count Julian; finally, of the Duchess of Montpensier, who, enraged at Henry III for having revealed some one of her secret failings, vexed him for the rest of his life.

CHAPTER 29

On civil laws appropriate for putting a little liberty in despotic government

Though despotic government in its nature is everywhere the same, yet circumstances, a religious opinion, a prejudice, received examples, a turn of mind, manners, mores, can leave considerable differences among them.

It is well for certain ideas to be established in them. Thus in China, the prince is regarded as the father of the people, and, at the beginning of the empire of the Arabs, the prince was their preacher.[77]

It is suitable for there to be some sacred book that acts as a rule, like the Koran for the Arabs, the books of Zoroaster for the Persians, the Veda for the Indians, the classics for the Chinese. The religious code replaces the civil code and fixes what is arbitrary.

It is not bad for judges to consult the ministers of religion in cases that are unclear.[78] Thus in Turkey, the cadis question the mullahs. And, if the case merits death, the particular judge, if there is one, may also suitably seek the advice of the governor, so that the civil power and the ecclesiastic power are further tempered by the political authority.

[77] The caliphs.

[78] [Ebulgazi Bahadir Han, Khan of Khorezm] *Histoire généalogique des Tatars*, pt. 3, p. 277, in the remarks [Bentinck's note, pt. 3, chap. 14; 1, 290; 1726 edn].

CHAPTER 30

Continuation of the same subject

It is despotic rage that has established that the father's disgrace would involve the disgrace of children and wives. The latter are already unfortunate without being criminal; and besides, the prince must leave suppliants between the accused and himself to soften his wrath or enlighten his justice.

In the Maldives,[79] it is a good custom for a lord who is disgraced to pay daily court to the king until he is returned to favor; his presence disarms the prince's wrath.

There are despotic states[80] in which it is thought that speaking to a prince on behalf of a disgraced man is to lack the respect due the prince. These princes seem to make every effort to deprive themselves of the virtue of mercy.

Arcadius and Honorius, in the law[81] of which I have spoken at length,[82] declare that they will not pardon those who dare entreat them on behalf of guilty men.[83] This law was very bad, for it is bad even in despotism.

The Persian custom that permits anyone to leave the kingdom who wants to, is very good; and though the opposite usage had its origin in despotism, where subjects were regarded as slaves[84] and those who left were regarded as fugitive slaves, nevertheless, the Persian practice is very good in despotisms, where fear of the people's fleeing or departing with what they owe checks or moderates the persecution of pashas and extortioners.

[79] See François Pyrard [*Voyages*, pt. 1, chap. 8; 1, 89; 1887–1890 edn].

[80] As today in Persia according to the report of [John] Chardin. This usage is quite old. Procopius says [in *The Persian Wars*, "History of the Wars"; 1.5.7–8], "Cabades was put into the castle of oblivion; there is a law forbidding one to speak of those shut up there or even to mention their names."

[81] Law 5 of the *Code* [*Corpus Juris Civilis, Code* 9.8.5.2]; *ad legem Juliam maiestatis.*

[82] In chapter 8 of this book.

[83] Frederick copied this law from the *Constitutions of Naples*, bk. 1 [*Liber Augustalis or the Constitutions of Melfi* [1231], 1.4].

[84] In monarchies, there is ordinarily a law prohibiting those who have public employments from leaving the kingdom without the permission of the prince. This law must also be established in republics. But in the ones with singular institutions, the prohibition must be generalized so that foreign mores will not be brought in.

BOOK 13

On the relations that the levy of taxes and the size of public revenues have with liberty

CHAPTER I

On the revenues of the state

The revenues of the state are a portion each citizen gives of his goods in order to have the security or the comfortable enjoyment of the rest.

In order to fix these REVENUES well one must consider both the necessities of the state and the necessities of the citizens. One must not take from the real needs of the people for the imaginary needs of the state.

Imaginary needs are the ones sought by the passions and weaknesses of those who govern, the charm of an extraordinary project, the sick envy of vainglory, and a certain impotence of spirit in the face of their fancies. Often those who, with restless spirit, were at the head of public business under a prince have thought that the needs of their small souls were the needs of the state.

There is nothing that wisdom and prudence should regulate more than the portion taken away from the subjects and the portion left to them.

Public revenues must not be measured by what the people can give but by what they should give, and if they are measured by what the people can give, it must at least be by what they can always give.

CHAPTER 2

That it is bad reasoning to say that large taxes are good in themselves

In certain monarchies one has seen that small countries that were exempt from taxes were as poverty-stricken as the places all around them that were overwhelmed by taxes. The principal reason for this is that a small, hemmed-in state cannot have industry, arts, or manufacturing because it is hampered in a thousand ways by the large state which encloses it. The large surrounding state has industry, manufacturing, and the arts, and it makes regulations procuring all advantages for itself. Therefore, the small state necessarily becomes poor, however few imposts are levied there.

Yet it was concluded from the poverty of these little countries that there must be heavy burdens[a] in order to make the people industrious. One would have done better to conclude that there must be none. All the wretched people from the surrounding area withdraw to these places and do nothing; already discouraged by overwhelming work, they make their whole felicity consist in idleness.

The effect of the wealth of a country is to fill all hearts with ambition; the effect of poverty is to bring them to despair. Ambition is excited by work; poverty is consoled by laziness.

Nature is just toward men. She rewards them for their pains; she makes them hard workers because she attaches greater rewards to greater work. But if an arbitrary power removes nature's rewards, the distaste for work recurs and inaction appears to be the only good.

[a] Montesquieu uses the term *charges*, "charges," "burdens," to cover a variety of ways a government imposes on its subjects: posts, taxes, and services.

CHAPTER 3

On taxes in countries where part of the people are slaves to the land

Slavery to the land[b] is sometimes established after a conquest. In this case, the slave who cultivates the land should be the share-cropper of the master. Only the sharing of loss and gain can reconcile those who are destined to work with those who are destined to enjoyment.

[b] *esclavage de la glèbe*. See 30.5, where Montesquieu speaks of "serfdom," *servitude de la glèbe* (notes [a] and [b], bk. 30).

CHAPTER 4

On a republic in a like case

When a republic has reduced a nation to cultivating lands for it, one should not tolerate the citizen's increasing the tax of the slave. It was not permitted in Lacedaemonia; it was thought that the Helots[1] would better cultivate the lands when they knew that their servitude would not increase; it was believed that the masters would be better citizens when they desired only what they were accustomed to having.

[1] Plutarch [*Moralia, Apophthegmata Laconica, Instituta Laconica* 41, 239d–e].

CHAPTER 5

On a monarchy in a like case

In a monarchy, when the nobility has the lands cultivated for its profit by the conquered people, again the ground-rent must not increase.[2] Moreover, it is well for the prince to be satisfied with his domain and with military service. But, if the prince wants to levy taxes in silver on the slaves of his nobility, the lord must stand warrant for the tax,[3] pay it

[2] This is why Charlemagne made his fine institutions about it. See bk. 5 of the Capitularies, art. 303 [*MGH*, LL. II, pt. 2, *Capitularia spuria, Benedicti capitularium*, 1.303].

[3] It is thus practiced in Germany.

for the slaves, and collect it back from them; and if this rule is not followed, the lord and those who levy the revenues for the prince, each in his turn, will harass the slave and will, one after the other, collect from him until he perishes from poverty or flees into the woods.

CHAPTER 6

On a despotic state in a like case

What I have just said is still more indispensable in the despotic state. The lord, who can be stripped of his lands and his slaves at any moment, is not inclined to preserve them.

Peter I, wanting to adopt the practice of Germany and levy his taxes in silver, made a very wise regulation that is still observed in Russia. The gentleman levies an assessment on the peasants and pays it to the czar. If the number of the peasants decreases, he pays the same amount; if the number increases, he pays no more; therefore, it is in his interest not to harass his peasants.

CHAPTER 7

On taxes in countries where slavery to the land is not established

In a state, when all the individuals are citizens and each one there possesses by his domain that which the prince possesses by his empire, imposts can be placed on persons, on lands, or on commodities, on two of these, or on all three together.

In respect to an impost on persons, an unjust proportion would be one that followed strictly the proportion of goods. In Athens, the citizens were divided[4] into four classes. Those who received five hundred measures of liquid or dry fruit from their goods paid one talent to the public; those who received three hundred measures from them, half a talent; those who had two hundred measures paid ten minas, or a sixth of a talent; those of the fourth class gave nothing. The

[4][Julius] Pollux [*Onomasticon*], bk. 8, chap. 10, art. 130 [8.10.130].

assessment was just although it was not proportional; if it did not follow the proportion of goods, it followed the proportion of needs. It was judged that each one had an equal *physical necessity*, that this physical necessity should not be assessed, that the useful came next, and that it should be assessed, but at less than the superfluous, and that the size of the assessment on the superfluous prevented superfluity.

In the assessment on lands, registers are made for the various classes of lands. But it is very difficult to recognize these differences, and still more difficult to find people without an interest in failing to recognize them. Therefore, there are two kinds of injustice in this case: the injustice of the man and the injustice of the thing itself. But if the assessment is not excessive in general, if the people are left plenty for necessities, the particular injustices will be as nothing. But if, on the contrary, the people are left strictly with what they must have in order to live, the least disproportion will be of the greatest consequence.

If some citizens do not pay enough, there is no great harm; their plenty always reverts to the public; if some individuals pay too much, their ruin turns against the public. If the state matches its fortune to that of individuals, the plenty of the individuals will soon make its fortune increase. Everything depends on the moment. Will the state begin by impoverishing its subjects in order to enrich itself? Or will it wait for its subjects to enrich it at their own pace? Will it have the first advantage or the second? Will it begin by being rich or will it end by being so?

Duties on commodities are the ones the least felt by the people, because no formal request is made for them. They can be so wisely managed that the people will be almost unaware that they pay them. To do this, it is of great consequence that it be the one who sells the commodity who pays the duty. He well knows that he is not paying for himself; and the buyer, who ultimately pays it, confounds it with the price. Some writers have said that Nero removed the duty of one-twenty-fifth on slaves who were sold;[5] yet he did no more than order that the seller would pay it instead of the buyer: this regulation, which left all the impost, appeared to have removed it.

There are two kingdoms in Europe where very high imposts have been put on beverages: in one of them the brewer alone pays the duty;

[5]"The tax on the sale of slaves was remitted, but this remission was more specious than real because it was also ordered that the seller pay it; this simply increased the price for the buyer because it was made part of the price" [L.]. Tacitus, *Annales*, bk. 13 [13.31].

in the other, it is levied alike on all the subjects who drink. In the first, no one feels the severity of the impost; in the second, it is regarded as onerous: in the former, the citizen feels only his liberty in not paying; in the latter, he feels only the necessity that obliges him to pay it.

Furthermore, in order that the citizen pay, his house must be perpetually searched. Nothing is more contrary to liberty, and those who establish these sorts of imposts have not the good fortune of having discovered, in this regard, the best kind of administration.

CHAPTER 8

How the illusion is preserved

In order to make the price of a thing and its duty become confused in the head of the one who pays, there must be some relation between the commodity and the impost, and one must not charge excessive duty on a product of small value. There are countries where the duty is more than seventeen times greater than the value of the commodity. In this way the prince removes the illusion from his subjects; they see that they are led in an unreasonable manner, and this makes them feel every bit of their servitude.

Besides, for the prince to be able to levy a duty so disproportionate to the value of the thing, he must sell the commodity himself and the people must not be able to buy it elsewhere; this is subject to a thousand drawbacks.

As fraud is very lucrative in this case, the natural penalty, the one reason demands, which is confiscation of the commodity, becomes incapable of checking it, especially because the commodity ordinarily has a very low price. Therefore, one must have recourse to extravagant penalties like those inflicted for the greatest crimes. This removes all proportion in penalties. Men whom one could not consider wicked are punished like scoundrels, which is the thing in the world most contrary to the spirit of moderate government.

I add that the more opportunities a people are given to defraud the tax-collector, the more the latter is enriched and the former are impoverished. In order to check fraud, tax-collectors must be given extraordinary means of harassment, and all is lost.

CHAPTER 9

On a bad sort of impost

We shall speak incidentally of an impost established in some states on the various clauses of civil contracts. In order to protect oneself from the tax-collector, one must have a vast knowledge, as these things are subject to subtle examinations. So, the tax-collector, the interpreter of the prince's regulations, exercises an arbitrary power over fortunes. Experience has shown that an impost on the paper on which the contract is to be written would be much better.

CHAPTER 10

That the size of taxes depends on the nature of the government

Taxes should be very light in despotic government. Otherwise, who would want to take the trouble to cultivate the land? Moreover, how can high taxes be paid in a government that does nothing to replace what the subject has given?

Given the stunning power of the prince and the strange weakness of the people, there must be no ambiguity about anything. Taxes should be so easy to collect and so clearly established that they cannot be increased or diminished by those who levy them. A portion of the fruits of the earth, an assessment by head, a tax of some percent on commodities are the only suitable ones.

It is well in despotic government for merchants to have a personal passage of safe-conduct and for usage to make them respected; otherwise, they would be too weak in discussions they might have with the officers of the prince.

CHAPTER 11

On fiscal penalties

A peculiarity of *fiscal penalties* is that, contrary to general practice, they are more severe in Europe than in Asia. In Europe, commodities, sometimes even ships and vehicles, are confiscated; in Asia, one takes neither the one nor the other. This is because in Europe the merchant has judges who can protect him from oppression; in Asia, despotic judges would themselves be the oppressors. What would the merchant do against a pasha who had decided to confiscate his commodities?

This harassment defeats itself and one sees it constrained to be somewhat gentle. In Turkey, only one entry duty is levied; after that, the whole country is open to merchants. False declarations result neither in confiscation nor in increase of duties. In China, packages that belong to people who are not merchants are not opened.[6] Fraud among the Moguls is punished not by confiscation but by the doubling of the duty. The Tartar princes[7] who live in Asian towns levy almost nothing on the commodities that pass through. And, if in Japan the crime of commercial fraud is a capital crime, it is because one has reasons for prohibiting all communication with foreigners and because fraud[8] there is an infringement of the laws made for the security of the state rather than of the laws of commerce.

[6] [Jean Baptiste] du Halde [*Description de l'Empire de la Chine*, "De la police de la Chine"], vol. 2, p. 37 [2, 67 H; 2, 57 P; 2, 97 L].

[7] [Ebulgazi Bahadir Han, Khan of Khorezm] *Histoire généalogique des Tatars*, pt. 3, p. 290 [Bentinck's note, pt. 3, chap. 16; 1, 290; 1726 edn].

[8] As they wanted to have a commerce with foreigners without entering into communication with them, they chose two nations: the Dutch for the commerce with Europe and the Chinese for that with Asia. They keep factors and sailors in a kind of prison and hamper them so much that they lose patience.

CHAPTER 12

The relation of the size of taxes to liberty

GENERAL RULE: One can levy heavier taxes in proportion to the liberty of the subjects and one is forced to moderate them insofar as servitude increases. This has always been and will always be. It is a rule

drawn from nature, which does not change; this rule is found in all countries, in England, in Holland, and in all states of decreasing liberty down to Turkey. Switzerland does not seem to conform to this because no taxes are paid there, but the particular reason is known, and it even confirms what I say. In those barren mountains, food is so dear and the country so heavily populated that a Swiss pays four times more to nature than a Turk pays to the sultan.

Dominant peoples such as the Athenians and the Romans can free themselves from every impost because they reign over subject nations. So they do not pay in proportion to their liberty; this is because, in this regard, they are not a people but a monarch.

But the general rule still holds. In moderate states, there is a compensation for heavy taxes; it is liberty. In despotic states,[9] there is an equivalent for liberty; it is the modest taxes.

In certain European monarchies there are provinces[10] that, by the nature of their political government, are in a better position than others. One always imagines that they do not pay enough, because as a result of the goodness of their government, they could pay even more; and it keeps coming to mind to take away the very government that produces the good that is communicated, that spreads afar, and that it would be much better to enjoy.

[9] In Russia, taxes are of medium size; they have been increased since despotism has become more moderate. See [Ebulgazi Bahadir Han, Khan of Khorezm] *Histoire généalogique des Tatars*, pt. 2 [Bentinck's note, pt. 9, chap. 9, "Du règne d'Arap-Mohamet-Chan"; 2, 726; 1726 edn].

[10] The *pays d'Etats*.

CHAPTER 13

In which government taxes are susceptible of increase

Taxes can be increased in most republics because the citizen, who believes he is paying to himself, has the will to pay them and ordinarily has the power to do so as a result of the nature of the government.

In monarchy, taxes can be increased because the moderation of the government can procure wealth there; it is a kind of reward to the prince for his respect of the laws.

In the despotic state they cannot be increased because extreme servitude cannot be increased.

CHAPTER 14

That the nature of taxes is relative to the government

An impost by head is more natural to servitude; the impost on commodities is more natural to liberty because it relates less directly to the person.[c]

It is natural in despotic government for the prince not to pay his militia or the people in his court in silver but to distribute lands to them, and there are, consequently, few taxes levied. For if the prince pays in silver, the most natural tax he can levy is a tax by head. This tax can only be very modest, for, as one cannot make various classes of wealthy taxpayers because of the abuses that would result, given the injustice and the violence of the government, one must necessarily be ruled by the rates that the poorest can pay.

The tax natural to moderate government is the impost on commodities. This impost, really paid by the buyers although advanced by the merchant, is a loan the merchant makes to the buyer; thus, the trader must be regarded as both the general debtor of the state and the creditor of all the individuals. He advances to the state the duty the buyer will eventually pay, and he has paid, for the buyer, the duty he has paid for the commodity. Therefore, it is felt that the more moderate the government, the more the spirit of liberty reigns, and the more secure fortunes are, the easier it is for the merchant to advance substantial duties to the state and to lend them to individuals. In England, a merchant really lends the state fifty to sixty pounds sterling for every barrel of wine he receives. What merchant would dare to do this kind of thing in a country governed like Turkey? And, if he dared to do it, how would he be able to, with a suspect, uncertain, and ruined fortune?

[c]It is clear from this sentence that an "impost," *impot*, is a particular "tax," *tribute*. These may be based on an "assessment," *taxe*.

CHAPTER 15

The abuse of liberty

These great advantages of liberty have caused the abuse of liberty itself. Because moderate government has produced remarkable results, this moderation has been abandoned; because large taxes have been raised, one has wanted to raise excessive ones; and, disregarding the hand of liberty that gave this present, one has turned to servitude, which refuses everything.

Liberty has produced excessive taxes, but the effect of these excessive taxes is to produce servitude in their turn, and the effect of servitude is to produce a decrease in taxes.

The monarchs of Asia make edicts about almost nothing except the exempting each year of some province in their empire;[11] such manifestations of their will are kindnesses. But in Europe, the edicts of the princes cause grief even before they are seen because they always speak of their needs and never of ours.

From an inexcusable listlessness that the ministers in these countries get from their government and often from their climate, the people gain the advantage that they are not constantly overwhelmed with new demands. Expenditures there do not increase because there are no new projects and if by chance there are some, they are projects whose end can be seen and not projects just beginning. Those who govern the state do not harry it because they do not endlessly harry themselves. But for us, it is impossible to have regularity in our finances because we always know that we shall do something, and never what we shall do.

Among ourselves, we no longer consider a great minister to be one who dispenses public revenues wisely, but rather one who is an industrious man and who finds what are called expedients.

[11]This is the usage of the emperors of China.

CHAPTER 16

On the conquests of the Mohammedans

These excessive taxes[12] accounted for the strange ease with which the Mohammedans made their conquests. Instead of that continuous succession of harassments devised by the subtle avarice of the emperors, the peoples saw themselves subjected to a simple tax that was easily paid and was similarly accepted; they obeyed a barbarian nation more happily than the corrupt government under which they had suffered both all the drawbacks of a liberty they no longer had and all the horrors of a present servitude.

[12] See what history says about the greatness, the eccentricity, and even the madness of these taxes. Anastasius devised one for breathing air: "so that whoever inhaled a breath of air paid the penalty" [L.].

CHAPTER 17

On the increase in troops

A new disease has spread across Europe; it has afflicted our princes and made them keep an inordinate number of troops. It redoubles in strength and necessarily becomes contagious; for, as soon as one state increases what it calls its troops, the others suddenly increase theirs, so that nothing is gained thereby but the common ruin. Each monarch keeps ready all the armies he would have if his peoples were in danger of being exterminated; and this state in which all strain against all is called peace.[13] Thus Europe is so ruined that if individuals were in the situation of the three most opulent powers in this part of the world, they would have nothing to live on. We are poor with the wealth and commerce of the whole universe, and soon, as a result of these soldiers, we shall have nothing but soldiers and we shall be like the Tartars.[14]

The great princes, not content to buy troops from smaller ones, seek everywhere to buy alliances, that is, almost always to lose their silver.

[13] It is true that it is this state of effort which principally maintains the balance, because it exhausts the great powers.

[14] For this, one must make use of the new invention of the militia established in almost the whole of Europe and push them to the same excess as the regular troops.

The consequence of such a situation is the permanent increase in taxes; and that which prevents all remedies in the future is that one no longer counts on the revenues, but makes war with one's capital. It is not unheard of for states to mortgage their lands even during peace and to ruin themselves by means they call extraordinary, which are so highly extraordinary that the most deranged son of a family could scarcely imagine them.

CHAPTER 18

On the remission of taxes

The maxim of the great eastern empires, that taxes should be returned to provinces that have suffered, could well be brought to monarchical states. There are many places where this is established, but more are overwhelmed than if it were not established, because, since the prince does not vary his levy, the whole state becomes jointly responsible. To relieve a village whose payments are deficient, one burdens another that pays more; the first is not restored, the second is destroyed. The people grow desperate between the necessity of paying from fear of exactions and the danger of paying from fear of surcharges.

A well-governed state should put in the first item of its expenditures a regular sum for fortuitous cases. In this, the public is like those individuals who ruin themselves by spending exactly the income from their lands.

In regard to the joint responsibility among the inhabitants of a village, this has been said[15] to be reasonable because one could assume a fraudulent plot on their part; but, where has one found that, based on suppositions, a thing that is unjust in itself and ruinous for the state has to be established?

[15] See [Pieter Burman] *Vectigalia populi Romani*, chap. 2, Paris, Briasson, 1740 [chap. 2, "De vectigali ex agris publici"; pp. 12–25; 1734 edn].

CHAPTER 19

What is most suitable for the prince and the people, tax-farming or direct taxes?

Direct taxes[d] are the administration of a good father of a family who levies his revenues himself with economy and order.

With direct taxes, the prince is in charge of hastening or delaying their levy, either according to his needs or according to those of his peoples. With direct taxes, he saves the state the immense profits made by tax-farmers, who impoverish it in infinite ways. With direct taxes, he saves the people from the grievous spectacle of sudden fortunes. With direct taxes, the silver levied passes through few hands; it goes directly to the prince and consequently reverts more promptly to the people. With direct taxes, the prince saves the people from an infinity of bad laws that are ever extorted from him by the importunate avarice of the tax-farmers whose present advantage lies in regulations that are fatal for the future.

Since the one who has silver is always the master of the one without, the tax-farmer is despotic over even the prince; he is not a legislator but he forces him to give laws.

I admit that it is sometimes useful to begin by farming out a newly established duty. There are arts and inventions for warding off frauds that the interest of the tax-farmers suggests to them and that agents could not have devised; but, once the system for the levy is made by the tax-farmer, direct taxes can be successfully established. In England, the administration of the *excise* and of the revenues from the *post office*, such as it is today, was borrowed from that of the tax-farmers.

In republics, the revenues of the state are almost always from direct taxes. The contrary establishment was a great vice of the Roman government.[16] In despotic states, where direct taxes are established, the

[16] Caesar was obliged to take the publicans out of the province of Asia and to establish there another sort of administration, as we learn from Cass. Dio [*Historia Romana* 42.6.3]. And Tacitus tells us [*Annales* 1.76.2] that it was granted to Macedonia and Achaea, provinces which Augustus had left to the Roman people, and which, consequently, were governed on the old plan, to be among those the emperor governed through his officers.

[d] *La régie*, "direct taxes," or the collection of taxes by governmental officials paid to do the task. This contrasts with tax-farming, where the collectors keep some part of the taxes they collect.

peoples are infinitely happier: witness Persia and China.[17] The unhappiest are those where the prince farms out his sea-ports and commercial towns. The history of monarchies is full of the ills caused by tax-collectors.

Nero, indignant at the harassments of the publicans, formed the impossible and magnanimous project of abolishing all imposts. He did not devise direct taxation; he made[18] four ordinances: that the laws made against the publicans, hitherto kept secret, would be published; that they could no longer exact what they had neglected to demand during the year; that a praetor would be established to judge the praetors' claims with no formality; and that the merchants would pay nothing for ships. Those were the halcyon days of this emperor.

[17] See [John] Chardin, *Voyages en Perse et autres lieux de l'Orient*, vol. 6 ["Description du gouvernement politique militaire et civil des Persans", chap. 2; 5, 237; 1811 edn].
[18] Tacitus, *Annales*, bk. 13 [13.51].

CHAPTER 20

On tax-collectors

All is lost when the lucrative profession of tax-collectors, by its wealth, comes to be an honored profession. This can be good in despotic states, where their employment is often a part of the functions of the governors themselves. It is not good in a republic, and a similar thing destroyed the Roman republic. It is no better in a monarchy; nothing is more contrary to the spirit of this government. Disgust infects all the other estates; honor loses all its esteem there; the slow and natural means for distinguishing oneself no longer have an effect, and the principle of the government is stricken.

In times past, one certainly saw scandalous fortunes; it was one of the calamities of the Fifty Years Wars; but at that time this wealth was regarded as ridiculous, and we admire it.

Every profession has some things as its lot. The lot of those who levy taxes is wealth, and the reward for this wealth is wealth itself. Glory and honor are for that nobility which knows, sees, and feels no real good except honor and glory. Respect and esteem are for those ministers and those magistrates who, finding only work upon work, watch day and night over the happiness of the empire.

BOOK 15

How the laws of civil slavery are related with the nature of the climate

CHAPTER 1

On civil slavery

Slavery in its proper sense is the establishment of a right which makes one man so much the owner of another man that he is the absolute master of his life and of his goods. It is not good by its nature; it is useful neither to the master nor to the slave: not to the slave, because he can do nothing from virtue; not to the master, because he contracts all sorts of bad habits from his slaves, because he imperceptibly grows accustomed to failing in all the moral virtues, because he grows proud, curt, harsh, angry, voluptuous, and cruel.

In despotic countries, where one is already in political slavery, civil slavery is more bearable than elsewhere. Each one there should be satisfied to have his sustenance and his life. Thus, the condition of the slave is scarcely more burdensome than the condition of the subject.

But in monarchical government, where it is sovereignly important neither to beat down nor to debase human nature, there must be no slaves. In democracy, where everyone is equal, and in aristocracy, where the laws should put their effort into making everyone as equal as the nature of the government can permit, slaves are contrary to the spirit of the constitution; they serve only to give citizens a power and a luxury they should not have.

CHAPTER 2

The origin of the right of slavery according to the Roman jurists[a]

One would never believe that pity established slavery and that in order to do so it went about it in three ways.[1]

The right of nations wanted prisoners to become slaves so that they would not be killed. The civil right of the Romans permitted debtors whose creditors might have mistreated them to sell themselves; and natural right wanted the children of an enslaved father who was no longer able to feed them to be enslaved like their father.

These reasons of the jurists are not sensible. It is false that killing in war is permissible except in the case of necessity; but, when a man has made another man his slave, it cannot be said that he had of necessity to kill him, since he did not do so. The only right that war can give over captives is that they may be imprisoned so that they can no longer do harm. Murdering in cold blood by soldiers after the heat of the action is condemned by all the nations of the world.[2]

2. It is not true that a freeman can sell himself. A sale assumes a price; if the slave sold himself, all his goods would become the property of the master; therefore, the master would give nothing and the slave would receive nothing. He would have some *savings*, one will say, but the savings are attached to the person. If it is not permitted to kill oneself because one will be lost to one's homeland, no more is it permitted to sell oneself. The liberty of each citizen is a part of the public liberty. This status in the popular state is also a part of sovereignty. To sell one's status as a citizen[b] is an act of such extravagance[3] that one cannot suppose a man would do it. If liberty has a price for the one who buys it, it is priceless for the one who sells it. Civil law, which has permitted the division of goods among men, could not have put among those goods some of the men who were to take part in the division. Civil law, which makes restitution in contracts that

[1] [*Corpus Juris Civilis*] *Institutes*, bk. 1 [1.3; *de jure personarum*].
[2] Unless one wants to mention those who eat their prisoners.
[3] I speak of slavery in the strict sense, such as it was among the Romans and as it is established in our colonies.

[a] By the Roman jurists M. means the views expressed in the *corpus juris civilis*.
[b] *qualité de citoyen*.

contain some injury, cannot keep from making restitution for an agreement that contains the most enormous of all injuries.

The third way is birth. This falls along with the other two. For, if a man cannot sell himself, even less can he sell a man who has not been born; if a prisoner of war cannot be reduced to servitude, still less can his children.

What makes the death of a criminal lawful is that the law punishing him was made in his favor. A murderer, for example, has enjoyed the law that condemns him; it has preserved his life at every moment; therefore, he cannot make a claim against it. It is not the same with the slave; the law of slavery has never been useful to him; it is against him in every case, without ever being for him, which is contrary to the fundamental principle of all societies.

One will say that the law has been useful to the slave because the master has nourished him. Therefore, those persons incapable of earning their living must be reduced to servitude. But one does not want such slaves as these. As for children, nature, which has given milk to mothers, has provided for their nourishment, and the remainder of their childhood is so nearly at the age when they have the greatest ability to make themselves useful, that one could not say that he who had nourished them, even though he was their master, had given them anything.

Moreover, slavery is as opposed to civil right as to natural right. What civil law could keep a slave from flight, since he is not in society and, consequently, civil laws are not his concern? He can be restrained only by a family law, that is, by the law of the master.

CHAPTER 3

Another origin of the right of slavery

I would as soon say that the right of slavery comes from the scorn that one nation conceives for another, founded on the difference in customs.

Lopez de Gomara[4] says that "the Spanish found, close to Sainte-

[4] *Bibliothèque anglaise*, vol. 13, pt. 2, art. 3. [Gomara is quoted in a review of Hans Sloane's *A Voyage to the Islands of Madera [sic], Barbados, Nieves, St. Christopher's, and Jamaica*, pp. 399–440 of the *Bibliothèque*; the Gomara quotation is on pp. 425–426 of the *Bibliothèque*. It can

Marie, baskets in which the inhabitants had put produce; there were crabs, snails, crickets, and grasshoppers. The victors treated this as a crime in the vanquished." The author claims that the right that made the Americans slaves of the Spanish was founded on this, not to mention the fact that they smoked tobacco and that they did not cut their beards in the Spanish fashion.

Knowledge makes men gentle, and reason inclines toward humanity; only prejudices cause these to be renounced.

be found in Francisco Lopez de Gomara, *Historia general de las Indias*, chap. 71, "Santa Marta," 1, 168–171; 1932 edn.]

CHAPTER 4

Another origin of the right of slavery

I would as soon say that religion gives to those who profess it a right to reduce to servitude those who do not profess it, in order to work more easily for its propagation.

It was this way of thinking that encouraged the destroyers of America in their crimes.[5] On this idea they founded the right of making so many peoples slaves; for these brigands, who absolutely wanted to be both brigands and Christians, were very devout.

Louis XIII[6] was extremely pained by the law making slaves of the Negroes in his colonies, but when it had been brought fully to his mind that this was the surest way to convert them, he consented to it.

[5] See the history of the conquest of Mexico by [Antoine de] Solis [y Rivadeneyra] [*History of the Conquest of Mexico by the Spaniards*], and that of Peru, by Garcilaso de la Vega [El Inca, *Royal Commentaries of the Incas and General History of Peru*].

[6] [Jean Baptiste] Labat, *Nouveau voyage aux isles de l'Amérique*, vol. 4, p. 114, 1722 edn [pt. 4, chap. 7, p. 38; 1698 edn].

CHAPTER 5

On the slavery of Negroes

If I had to defend the right we had of making Negroes slaves, here is what I would say:

The peoples of Europe, having exterminated those of America, had to make slaves of those of Africa in order to use them to clear so much land.

Sugar would be too expensive if the plant producing it were not cultivated by slaves.

Those concerned are black from head to toe, and they have such flat noses that it is almost impossible to feel sorry for them.

One cannot get into one's mind that god, who is a very wise being, should have put a soul, above all a good soul, in a body that was entirely black.

It is so natural to think that color constitutes the essence of humanity that the peoples of Asia who make eunuchs continue to deprive blacks of their likeness to us in a more distinctive way.

One can judge the color of the skin by the color of the hair, which, among the Egyptians, who are the best philosophers in the world, was of such great consequence that they had all the red-haired men who fell into their hands put to death.

A proof that Negroes do not have common sense is that they make more of a glass necklace than of one of gold, which is of such great consequence among nations having a police.

It is impossible for us to assume that these people are men because if we assumed they were men one would begin to believe that we ourselves were not Christians.

Petty spirits exaggerate too much the injustice done the Africans. For, if it were as they say, would it not have occurred to the princes of Europe, who make so many useless agreements with one another, to make a general one in favor of mercy and pity?

CHAPTER 6

The true origin of the right of slavery

It is time to seek the true origin of the right of slavery. It should be founded on the nature of things; let us see if there are cases where it does derive from it.

In every despotic government, it is very easy to sell oneself; there political slavery more or less annihilates civil liberty.

Mr. Perry[7] says that the Muscovites sell themselves easily: I know the reason well; it is because their liberty is worth nothing.

In Achim everyone seeks to sell himself. Some of the principal lords have no fewer than a thousand slaves,[8] who are the principal merchants, who also have many slaves under them, and these latter many others; they are inherited and there is a traffic in them. In these states, the freemen, who are too weak to oppose the government, seek to become the slaves of those who tyrannize the government.

Here lies the just origin, the one conforming to reason, of the very gentle right of slavery that one sees in some countries, and it has to be gentle because it is founded on the free choice of a master, a choice a man makes for his own utility and which forms a reciprocal agreement between the two parties.

[7]John Perry, *The State of Russia under the Present Czar* (Paris, 1717). [Perry describes all Russians as slaves to the Czar; perhaps M. has in mind pp. 258–260; 1967 edn.]
[8]William Dampier, *Voyages*, vol. 3 (Amsterdam, 1711) [vol. 2, pt. 1, chap. 7; 2, 67; 1906 edn].

CHAPTER 7

Another origin of the right of slavery

Here is another origin of the right of slavery and even of that cruel slavery seen among men.

There are countries where the heat enervates the body and weakens the courage so much that men come to perform an arduous duty only from fear of chastisement; slavery there runs less counter to reason, and as the master is as cowardly before his prince as his slave is before him, civil slavery there is again accompanied by political slavery.

Aristotle[9] wants to prove that there are slaves by nature, and what he says scarcely proves it. I believe that, if there are any such, they are those whom I have just mentioned.

But, as all men are born equal, one must say that slavery is against nature, although in certain countries it may be founded on a natural reason, and these countries must be distinguished from those in which even natural reasons reject it, as in the countries of Europe where it has so fortunately been abolished.

Plutarch tells us in the life of Numa that there was neither master nor slave in the age of Saturn.[c] In our climates, Christianity has brought back that age.

[9][Aristotle], *Pol.*, bk. 1, chap. 1 [1254a17–1255a2].

[c]See Plutarch, *Comp, Lycurgus and Numa*, 1.5.

CHAPTER 8

Uselessness of slavery among ourselves

Therefore, natural slavery must be limited to certain particular countries of the world. In all the others, it seems to me that everything can be done by freemen, however arduous the work that society requires.

What makes me think this is that before Christianity had abolished civil servitude in Europe, work in the mines was regarded as so arduous that one believed it could be done only by slaves or criminals. But today one knows that men employed there live happily.[10] One has encouraged this profession by small privileges; to an increase in work one has joined an increase in gain, and one has come to make them love their condition more than any other they could have assumed.

There is no work so arduous that one cannot adjust it to the strength of the one who does it, provided that reason and not avarice regulates it. With the convenience of machines invented or applied by art, one can replace the forced labor that elsewhere is done by slaves. The mines of

[10]One can learn what happens in this respect in the mines of the Hartz in lower Saxony and in those of Hungary.

the Turks, in the Province of Timisuara,[d] were richer than those in Hungary, but they did not produce as much because the imagination of the Turks never went beyond the brawn of their slaves.

I do not know if my spirit or my heart dictates this point. Perhaps there is no climate on earth where one could not engage freemen to work. Because the laws were badly made, lazy men appeared; because these men were lazy, they were enslaved.

[d]In present-day Rumania.

CHAPTER 9

On nations among whom civil liberty is generally established

Every day one hears it said that it would be good if there were slaves among us.

But, to judge this, one must not examine whether they would be useful to the small, rich, and voluptuous part of each nation; doubtless they would be useful to it; but, taking another point of view, I do not believe that any one of those who make it up would want to draw lots to know who was to form the part of the nation that would be free and the one that would be enslaved. Those who most speak in favor of slavery would hold it the most in horror, and the poorest of men would likewise find it horrible. Therefore, the cry for slavery is the cry of luxury and voluptuousness, and not that of the love of public felicity. Who can doubt that each man, individually, would not be quite content to be the master of the goods, the honor, and the life of others and that all his passions would not be awakened at once at this idea? Do you want to know whether the desires of each are legitimate in these things? Examine the desires of all.

CHAPTER 10

The various kinds of slavery

There are two sorts of slavery: real and personal. The real one is the one that attaches the slave to the land. Such were the slaves among the Germans, so Tacitus relates.[11] They held no office in the household; they returned a certain quantity of grain, livestock, or cloth to their master; the purpose of their slavery went no further. This kind of servitude is still established in Hungary, Bohemia, and several places in southern Germany.

The concern of personal servitude is service in the household, and it relates more to the person of the master.

Extreme abuses of slavery occur when it is personal and real at the same time. Such was the servitude of the Helots among the Lacedaemonians; they were subjected to all the work outside the household and to all sorts of insults within the household: this *helotism* is contrary to the nature of things. Simple peoples have only real slavery[12] because their women and children do the domestic work. Voluptuous peoples have personal slavery, because luxury requires the service of slaves in the house. Now, *helotism* unites in the same persons the slavery established among voluptuous peoples and the one established among simple peoples.

[11] [Tacitus] *Germania* [25].

[12] Tacitus [*Germania*, 20] says, "You could not distinguish master from slave by the delights of life."

CHAPTER 11

What the laws ought to do in relation to slavery

But whatever the nature of slavery, civil laws must seek to remove, on the one hand, its abuses, and on the other, its dangers.

CHAPTER 12

The abuse of slavery

In the Mohammedan states,[13] one is not only the master of the life and goods of the female slaves, but also of what is called their virtue or their honor. One of the misfortunes of these countries is that the larger part of the nation exists only in order to serve the voluptuousness of the other. This servitude is rewarded by the laziness that such slaves are given to enjoy, which is yet another misfortune for the state.

This laziness makes the seraglios of the East[14] delightful places even for those against whom they are made. People who fear only work can find their happiness in these tranquil places. But one sees that in this way one runs counter even to the spirit in which slavery is established.

Reason wants the power of the master not to extend beyond things that are of service to him; slavery must be for utility and not for voluptuousness. The laws of modesty are a part of natural right and should be felt by all the nations in the world.

For if the law that preserves the modesty of slaves is good in these states where unlimited power mocks everything, how good will it be in monarchies, how good in republican states?

A provision of the law of the Lombards[15] seems good for all governments. "If a master debauches the wife of his slave, both of them will be free." This tempering is admirable for preventing and checking the incontinence of masters without too much severity.

I do not see that the Romans had a good police in this regard. They gave rein to the incontinence of masters; in a way they even deprived their slaves of the right of marriage. The slaves were the meanest part of the nation, but mean as they were, it was good for them to have mores, and further, by denying them marriages, one corrupted the marriages of the citizens.

[13] See [John] Chardin, *Voyages en Perse et autres lieux de l'Orient* ["Voyage de Paris à Ispahan"; 2, 224; 1811 edn].

[14] See [John] Chardin [*Voyages en Perse et autres lieux de l'Orient*], vol. 2, "Description du marché d'Isagour" ["Voyage de Paris à Ispahan"; 1, 345–347; 1811 edn].

[15] [*Leges Langobardorum*] bk. 1, tit. 32, para. 5 [Liut. 140].

CHAPTER 13

The danger of a large number of slaves

Having a large number of slaves has different effects in the various governments. It is not a burden in despotic government; political slavery, established in the body of the state, makes civil slavery little felt. Those who are called freemen are scarcely more free than those without this status; and as these latter, whether eunuchs, freed men, or slaves, have almost all matters of business in their hands, the condition of a freeman and that of a slave are nearly alike. It is almost indifferent whether few or many people there live in slavery.

But in moderate states, it is very important not to have too many slaves. Political liberty makes civil liberty precious, and the one who is deprived of the latter is also deprived of the former. He sees a happy society of which he is not even a part; he finds security established for others and not for himself; he feels that his master's soul can expand, and that his own soul is constantly constrained to sink. Nothing brings the condition of the beasts closer than always to see freemen and not to be one. Such people are the natural enemies of society, and it would be dangerous for them to be numerous.

Therefore, one must not be astonished that in moderate governments the state has been so disturbed by the rebellion of slaves and that this has happened so rarely[16] in despotic states.

[16]The rebellion of the Mamelukes was a particular case: they were a body of militia which usurped the empire.

CHAPTER 14

On armed slaves

It is less dangerous to arm slaves in a monarchy than in republics. There a warrior people, a body of nobility, will sufficiently contain armed slaves. In a republic, men who are citizens will scarcely be able to contain people who, bearing arms, are the equals of the citizens.

The Goths who conquered Spain scattered throughout the country and soon were very weak. They made three noteworthy regulations:

they abolished the former custom that prohibited them from allying themselves with the Romans through marriage;[17] they established that all those freed from the fisc would go to war on pain of being reduced to servitude;[18] they ordered that each Goth would lead to war and arm a tenth of his slaves.[19] This number was not very large by comparison with the number who remained. In addition, these slaves led to war by their master did not make up a separate body; they were in the army and remained, so to speak, in the family.

[17]*Lex Wisigothorum*, bk. 3, tit. 1, para. 1 [3.1.1].
[18]Ibid. [*Lex Wisigothorum*], bk. 5, tit. 7, para. 20 [5.7.20].
[19]Ibid. [*Lex Wisigothorum*], bk. 9, tit. 1, para. 9 [9.2.9].

CHAPTER 15

Continuation of the same subject

When all in the nation are warriors, armed slaves are to be feared even less.

By the law of the Alemanni, a slave who stole something that had been put down[20] was subject to the penalty one would have inflicted on a freeman, but, if he took it by violence,[21] he was obliged only to restore the stolen thing. Among the Alemanni, actions whose principle was courage and strength were not odious. They made use of their slaves in their wars. In most republics, one has always sought to beat down the courage of the slaves; the Alemanni, sure of themselves, thought of increasing the audacity of their own; always armed, they feared nothing from the slaves; these were the instruments of their brigandage or of their glory.

[20]*Leges Alamannorum*, chap. 5, para. 3 [B5.3].
[21]Ibid. [*Leges Alamannorum*], chap. 5, para. 5 [B5.3], *per virtutem*: "by strength."

CHAPTER 16

Precautions to take in moderate governments

In the moderate state, the humanity one has for slaves will be able to prevent the dangers one could fear from there being too many of them. Men grow accustomed to anything, even to servitude, provided the master is not harsher than the servitude. The Athenians treated their slaves with great gentleness; one sees that the slaves did not disturb the state in Athens, whereas they shook it in Lacedaemonia.

One sees that the first Romans were not at all uneasy about their slaves. It was when they had lost every feeling of humanity for them that one saw arise those slave wars that have been compared to the Punic Wars.[22]

Simple nations who are attached to work are ordinarily gentler toward their slaves than those who have renounced work. The first Romans lived, worked, and ate with their slaves; they were gentle and fair to them; the greatest penalty they inflicted on them was to make them walk before their neighbors with a forked stick on their backs. Mores were enough to maintain the fidelity of slaves; they did not have to have laws.

But when Rome expanded, when the slaves of the Romans were no longer companions in their work but instruments of their luxury and arrogance, laws were needed as there were no mores at all. There had even to be terrible laws in order to establish security for these cruel masters who lived among their slaves as if among their enemies.

One made the senatus-consult Silanianium and other laws[23] which established that, when a master was killed, all the slaves under the same roof or within earshot would without distinction be condemned to death. Those who, in this case, gave refuge to a slave to save him were punished as murderers.[24] Even the slave whose master had ordered him to kill him[25] and who obeyed was guilty; the one who had not kept

[22] Florus [*Epitome rerum Romanorum*], bk. 3 [2.7.2], says, "Sicily, more cruelly devastated by the Slave War than by the Punic War."

[23] See all of the article *de senatus consultu Silaniano et Claudiano quorum testamenta ne aperiantur* [*Corpus Juris Civilis*, *Digest* 29.5].

[24] Law 3, para. 12 [*Corpus Juris Civilis*, *Digest* 29.5.3.12]; *de senatus consultus Silaniano.*

[25] When Anthony commanded Eros to kill him this was not only a command to kill him but also to kill himself, for, if he had obeyed, he would have been punished as the murderer of his master.

the master from killing himself was punished.[26] If a master were killed while traveling, one put to death[27] those who remained with him and those who had fled. All these laws were applicable even to those whose innocence was proven. Their purpose was to give the slaves a prodigious respect for their master. The laws were not dependent on civil government but on a vice or imperfection in civil government. They were not derived from the fairness of the civil laws because they were contrary to the principles of the civil laws. They were properly founded on the principle of war, except that the enemies were in the bosom of the state. The senatus-consult Silanianium derived from the right of nations, which wants a society, even an imperfect one, to preserve itself.

It is a misfortune in government when the magistracy sees itself thus constrained to make cruel laws. Because obedience has been made difficult, one is obliged to augment the penalty for disobedience or to make faithfulness suspect. A prudent legislator avoids the misfortune of becoming a terrifying legislator. Because the slaves among the Romans could have no trust in the law, the law could have no trust in them.

[26] Law 1, para. 22 [*Corpus Juris Civilis*, *Digest* 29.5.1.22]; *de senatu consultu Silaniano.*

[27] Law 1, para. 31, ibid. [*Corpus Juris Civilis*, *Digest* 29.5.1.31]; *de senatu consultu Silaniano.*

CHAPTER 17

Regulations to make between the master and the slaves

The magistrate should see to it that the slave is nourished and clothed; this should be regulated by law.

The laws should take care that slaves are looked after in sickness and in old age. Claudius[28] ordered that sick slaves who were abandoned by their masters would be free if they escaped. This law secured their liberty; it should also have secured their life.

When the law permits the master to take the life of his slave, it is a right he should exercise as a judge and not as a master; the law must order formalities, which remove the suspicion of a violent action.

In Rome when fathers were no longer permitted to put their children

[28] Xiphilinus, *in Claudio* [Cass. Dio, *Historia Romana*, 60 (61).29.7; Xiph. 142.26–29].

to death, the magistrates imposed[29] the penalty that the father wanted to prescribe. A like usage would be reasonable between master and slaves in countries where masters have the right of life and death.

The law of Moses was very crude.[e] "If someone beats his slave and the slave dies under his hand, he will be punished; but if the slave survives a day or two, he will not be punished because it is his silver."[f] What a people, whose civil law ceased to cling to natural law!

According to a Greek law,[30] slaves treated too roughly by their master could ask to be sold to another. In later times, there was a similar law in Rome.[31] A master incensed with his slave and a slave incensed with his master should be separated.

When a citizen mistreats the slave of another, the latter must be able to go before a judge. The laws of Plato[32] and of most peoples take natural defense away from slaves; therefore, they must be given civil defense.

In Lacedaemonia, slaves could expect no justice for either insults or injuries. The extremity of their unhappiness was that they were the slaves not only of a citizen but also of the public; they belonged to everyone and to one alone. In Rome one considered only the interest of the master[33] in the harm done to a slave. In the application of the Aquilian law, a wound inflicted on a beast and one inflicted on a slave were confounded; attention was paid only to the reduction in their price. In Athens[34] he who had mistreated the slave of another was punished severely, sometimes even by death. The Athenian law, with reason, did not want to add the loss of security to that of liberty.

[29] See law 3 of the *Code* [*Corpus Juris Civilis*, *Code* 8.46.3]; *de patria potestate*, which is by the Emperor Alexander [Severus].

[30] Plutarch [*Moralia*] *De superstitione* [166d].

[31] See the constitution of Antoninus Pius [*Corpus Juris Civilis*], *Institutes*, bk. 1, tit. 7 [1.7; *de lege Fufia caninia sublata*].

[32] [Plato, *Laws*] bk. 9 [865c–d]. [This may not be the clearest interpretation of the Plato passage, but I am convinced this is the one M. had in mind. Consider footnote 26.1 in bk. 26, chap. 3.]

[33] This was also often the spirit of the laws of the peoples who came from Germany, as can be seen in their codes.

[34] Demosthenes, *Orationes*, *Contra Midiam*, p. 610, Frankfurt, 1604 edn [21.47].

[e] The word here is *rude*, meaning both primitive and hard.

[f] Exodus 20.20–21.

CHAPTER 18

On freeing slaves

One certainly feels that when there are many slaves in a republican government, many of them must be freed. The trouble is that, if there are too many slaves, they cannot be contained; if there are too many freed men, they cannot survive and they become a burden to the republic; moreover, the republic can be equally endangered by too many freed men and by too many slaves. Therefore, the laws must keep an eye on these two drawbacks.

The various laws and the senatus-consults made in Rome for and against slaves, sometimes to hamper, sometimes to facilitate, the freeing of slaves, make their uneasiness in this regard easy to see. There were even times when one did not dare make laws. When, under Nero,[35] the senate was asked to permit the patrons to return ungrateful freed men to servitude, the emperor wrote that particular suits were to be judged and nothing general was to be enacted.

I scarcely know how to say which regulations a good republic should make on this matter; it depends too much on circumstances. Here are some reflections.

Slaves must not be freed suddenly in considerable numbers by a general law. One knows that, among the Volscians,[36] when the freed men became masters of the voting, they made an abominable law giving themselves the right to be the first to lie with girls who married freeborn men.

There are various ways to introduce new citizens into the republic imperceptibly. The laws can favor savings and put the slaves in a position to buy their liberty. They can set the term of servitude, as did those of Moses which limited the servitude of Hebrew slaves to six years.[37] It is easy each year to free a certain number of slaves among those who, by their age, health, or industry, will have the means to earn a living. One can even heal the ill at its root; as a great number of slaves are bound to the various employments given them, transferring to the freeborn a part of these employments, for example, commerce or navigation, decreases the number of slaves.

[35] Tacitus, *Annales*, bk. 13 [13.27].

[36] [Johann] Freinsheim, *Supplementorum Livianorum*, decade 2, bk. 5 [15.14].

[37] *Exodus*, chap. 21 [21.2].

When there are many freed men, the civil laws must specify what they owe to their patron, or the contract of emancipation must specify these duties for them.

One feels that their condition should be more favored in the civil state than in the political state because even in popular government, power should not fall into the hands of the common people.

In Rome, where there were so many freed men, the political laws in their regard were admirable. They were given little and excluded from almost nothing. They certainly took part in legislation, but they almost never influenced the resolutions that were taken. They could hold posts and even belong to the priesthood,[38] but this privilege was in a way rendered empty by the disadvantages they had in the elections. They had the right to enter the militia; but to be a soldier one had to be in a certain census. Nothing kept freed men[39] from uniting by marriage with freeborn families, but they were not permitted alliances with senators' families. Finally, their children were freeborn, although they themselves were not.

[38] Tacitus, *Annales*, bk. 3 [13.27].
[39] Harangue of Augustus, in Cass. Dio [*Historia Romana*], bk. 56 [56.7.2].

CHAPTER 19

On freed men and eunuchs

Thus in the government of many, it is often useful for the condition of the freed men to be but slightly below that of the freeborn and for the laws to work to remove their aversion to their condition. But in the government of one alone, while luxury and arbitrary power reign, there is nothing to be done in this regard. The freed men are almost always above the freemen. They dominate in the court of the prince and in the palaces of the important men; and, as they have studied the weaknesses of their master and not his virtues, they make him reign not by his virtues but by his weaknesses. Such men were the freed men in Rome at the time of the emperors.

When the principal slaves are eunuchs, despite the privileges accorded them, they can scarcely be regarded as freed men. For, as they cannot have families, they are bound to a family by their nature, and it is only by a kind of fiction that one can regard them as citizens.

Nevertheless, there are countries where they are given all the magistracies: "In Tonkin,"[40] Dampier says, "all the civil and military mandarins are eunuchs."[41] They have no family, and although they are naturally avaricious, the master or prince profits in the end from their very avarice.

The same Dampier[42] tells us that, in this country, eunuchs cannot do without wives and that they marry. This law permitting them to marry can be founded only, on the one hand, on the consideration one has there for such people, and, on the other, on the scorn one has there for women.

Thus, one entrusts magistracies to these people because they have no family, and yet they are permitted to marry because they have magistracies.

It is then that the remaining senses obstinately want to make up for those that are lost, and the enterprises of despair are a kind of enjoyment. Thus in Milton's work, that spirit, to whom only desires remain, being filled with his degradation, wants to make use even of his powerlessness.[g]

In the history of China, one sees a great number of laws that remove eunuchs from all civil and military employments, but they always return to them. It seems that eunuchs are a necessary ill in the East.

[40] [William Dampier, *Voyages*] vol. 3, p. 91 [vol. 2, pt. 1, chap. 4; 2, 14; 1906 edn].
[41] It was formerly thus in China. The two Mohammedan Arabs who traveled there in the ninth century say "the eunuch" when they want to speak to the governor in a town. [Eusèbe Renaudot, *Anciennes relations des Indes et de la Chine*, pp. 29, 60–61; 1718 edn.]
[42] [William Dampier, *Voyages*] vol. 3, p. 94 [vol. 2, pt. 1, chap. 4; 2, 15, 1906 edn.]

[g] John Milton, *Paradise Lost*.

The Spirit of Laws

Part 3

BOOK 14

On the laws in their relation to the nature of the climate

CHAPTER 1

The general idea

If it is true that the character[a] of the spirit and the passions of the heart are extremely different in the various climates, *laws* should be relative to the differences in these passions and to the differences in these characters.

[a] *Caractère* can mean mark or sign, trait, or a habitual way of acting and feeling. When Montesquieu uses *caractère*, he seems to mean a form or shape of the spirit, combining these meanings.

CHAPTER 2

How much men differ in the various climates

Cold air[1] contracts the extremities of the body's surface fibers; this increases their spring and favors the return of blood from the extremities of the heart. It shortens these same fibers;[2] therefore, it increases their strength[b] in this way too. Hot air, by contrast, relaxes these extremities of the fibers and lengthens them; therefore, it decreases their strength and their spring.

Therefore, men are more vigorous in cold climates. The action of the heart and the reaction of the extremities of the fibers are in closer

[1] This is even visible: in the cold, one appears thinner.
[2] It is known that it shortens iron.

[b] We translate *force* as both "force" and "strength," as the context is more and less abstract.

accord, the fluids are in a better equilibrium, the blood is pushed harder toward the heart and, reciprocally, the heart has more power. This greater strength should produce many effects: for example, more confidence in oneself, that is, more courage; better knowledge of one's superiority, that is, less desire for vengeance; a higher opinion of one's security, that is, more frankness and fewer suspicions, maneuvers, and tricks. Finally, it should make very different characters. Put a man in a hot, enclosed spot, and he will suffer, for the reasons just stated, a great slackening of heart. If, in the circumstance, one proposes a bold action to him, I believe one will find him little disposed toward it; his present weakness will induce discouragement in his soul; he will fear everything, because he will feel he can do nothing. The peoples in hot countries are timid like old men; those in cold countries are courageous like young men. If we turn our attention to the recent wars,[3] which are the ones we can best observe and in which we can better see certain slight effects that are imperceptible from a distance, we shall certainly feel that the actions of the northern peoples who were sent to southern countries[4] were not as fine as the actions of their compatriots who, fighting in their own climate, enjoyed the whole of their courage.

The strength of the fibers of the northern peoples causes them to draw the thickest juices from their food. Two things result from this: first, that the parts of the chyle, or lymph,[c] being broad surfaced, are more apt to be applied to the fibers and to nourish them; and second, that, being coarse, they are less apt to give a certain subtlety to the nervous juice. Therefore, these people will have large bodies and little vivacity.

The nerves, which end in the tissue of our skin, are made of a sheaf of nerves. Ordinarily, it is not the whole nerve that moves, but an infinitely small part of it. In hot countries, where the tissue of the skin is relaxed, the ends of the nerves are open and exposed to the weakest action of the slightest objects. In cold countries, the tissue of the skin is contracted and the papillae compressed. The little bunches are in a way paralyzed; sensation hardly passes to the brain except when it is extremely strong and is of the entire nerve together. But imagination,

[3] The War of the Spanish Succession.
[4] In Spain, for example.

[c] In the eighteenth century these words referred to various body fluids, without the precise denotations they have in modern physiology.

taste, sensitivity, and vivacity depend on an infinite number of small sensations.

I have observed the place on the surface tissue of a sheep's tongue which appears to the naked eye to be covered with papillae. Through a microscope, I have seen the tiny hairs, or a kind of down, on these papillae; between these papillae were pyramids, forming something like little brushes at the ends. It is very likely that these pyramids are the principal organ of taste.

I had half of the tongue frozen; and, with the naked eye I found the papillae considerably diminished; some of the rows of papillae had even slipped inside their sheaths: I examined the tissue through a microscope; I could no longer see the pyramids. As the tongue thawed, the papillae appeared again to the naked eye, and, under the microscope, the little brushes began to reappear.

This observation confirms what I have said, that, in cold countries, the tufts of nerves are less open; they slip inside their sheaths, where they are protected from the action of external objects. Therefore, sensations are less vivid.

In cold countries, one will have little sensitivity to pleasures; one will have more of it in temperate countries; in hot countries, sensitivity will be extreme. As one distinguishes climates by degrees of latitude, one can also distinguish them by degrees of sensitivity, so to speak. I have seen operas in England and Italy; they are the same plays with the same actors: but the same music produces such different effects in the people of the two nations that it seems inconceivable, the one so calm and the other so transported.

It will be the same for pain; pain is aroused in us by the tearing of some fiber in our body. The author of nature has established that this pain is stronger as the disorder is greater; now it is evident that the large bodies and coarse fibers of the northern peoples are less capable of falling into disorder than the delicate fibers of the peoples of hot countries; therefore, the soul is less sensitive to pain. A Muscovite has to be flayed before he feels anything.

With that delicacy of organs found in hot countries, the soul is sovereignly moved by all that is related to the union of the two sexes; everything leads to this object.

In northern climates, the physical aspect of love has scarcely enough strength to make itself felt; in temperate climates, love, accompanied by a thousand accessories, is made pleasant by things that at first seem to

be love but are still not love; in hotter climates, one likes love for itself; it is the sole cause of happiness; it is life.

In southern climates, a delicate, weak, but sensitive machine gives itself up to a love which in a seraglio is constantly aroused and calmed; or else to a love which as it leaves women much more independent is exposed to a thousand troubles. In northern countries, a healthy and well-constituted but heavy machine finds its pleasures in all that can start the spirits in motion again: hunting, travels, war, and wine. You will find in the northern climates peoples who have few vices, enough virtues, and much sincerity and frankness. As you move toward the countries of the south, you will believe you have moved away from morality itself: the liveliest passions will increase crime; each will seek to take from others all the advantages that can favor these same passions. In temperate countries, you will see peoples whose manners, and even their vices and virtues are inconstant; the climate is not sufficiently settled to fix them.

The heat of the climate can be so excessive that the body there will be absolutely without strength. So, prostration will pass even to the spirit; no curiosity, no noble enterprise, no generous sentiment; inclinations will all be passive there; laziness there will be happiness; most chastisements there will be less difficult to bear than the action of the soul, and servitude will be less intolerable than the strength of spirit necessary to guide one's own conduct.

CHAPTER 3

A contradiction in the characters of certain peoples of the South

Indians[5] are by nature without courage; even the children[6] of Europeans born in the Indies lose the courage of the European climate. But how does this accord with their atrocious actions, their barbaric

[5] [Jean Baptiste] Tavernier says, "A hundred European soldiers would have little difficulty routing a thousand Indian soldiers." [*Travels in India*; bk. 2, ch. 9; 1, 391; 1889 edn.]

[6] Even Persians who settle in the Indies take on, in the third generation, the indolence and cowardice of the Indians. See [François] Bernier, *Travels in the Mogul Empire*, vol. 1, p. 282 ["Letter to Colbert concerning Hindustan"; p. 209; 1916 edn].

customs and penitences? Men there suffer unbelievable evils; women burn themselves: this is considerable strength for so much weakness.

Nature, which has given these peoples a weakness that makes them timid, has also given them such a lively imagination that everything strikes them to excess. The same delicacy of organs that makes them fear death serves also to make them dread a thousand things more than death. The same sensitivity makes the Indians both flee all perils and brave them all.

As a good education is more necessary to children than to those of mature spirit, so the peoples of these climates have greater need of a wise legislator than the peoples of our own. The more easily and forcefully one is impressed, the more important it is to be impressed in a suitable manner, to accept no prejudices, and to be led by reason.

In the time of the Romans, the peoples of northern Europe lived without arts, without education, almost without laws, and still, with only the good sense connected with the coarse fibers of these climates, they maintained themselves with remarkable wisdom against the Roman power until they came out of their forests to destroy it.

CHAPTER 4

The cause of the immutability of religion, mores, manners, and laws in the countries of the east

If you join the weakness of organs that makes the peoples of the East receive the strongest impressions in the world to a certain laziness of the spirit, naturally bound with that of the body, which makes that spirit incapable of any action, any effort, any application, you will understand that the soul can no longer alter impressions once it has received them. This is why laws, mores,[7] and manners, even those that seem not to matter, like the fashion in clothing, remain in the East today as they were a thousand years ago.

[7] In a fragment from Nicholas of Damascus, in the collection of Constantine Porphyrogenitus, one sees that it was an ancient custom in the East to send someone to strangle a governor who displeased; this dates from the times of the Medes. [Nicholas of Damascus, *Fragments*, #66.26; *FGrH*; 2A, 366–367.]

Moreover, each year the emperor is informed of the plowman who has most distinguished himself in his profession; he makes him a mandarin of the eighth order.

Among the ancient Persians,[14] on the eighth day of the month named *Chorem ruz* the kings would lay aside their pomp and eat with the plowmen. These institutions are remarkable for encouraging agriculture.

[14] [Thomas] Hyde, *Historia religionis veterum Persarum in Sad-der* [chap. 19; pp. 253–254; 1700 edn].

CHAPTER 9

A means of encouraging industriousness

I shall show in Book 19 that, ordinarily, lazy nations are arrogant. One could turn effect against cause and destroy laziness by arrogance. In southern Europe, where peoples are so impressed by the point of honor, it would be well to give prizes to the plowmen who had best cultivated their lands and to the workers who had been most industrious. This practice will succeed in every country. In our time it has been used in Ireland to establish one of the largest textile mills in Europe.

CHAPTER 10

On laws related to the sobriety of peoples

In hot countries, perspiration dissipates much of the watery part of the blood;[15] a like liquid must therefore be substituted for it. Water is remarkably useful for this; alcoholic beverages there would coagulate

[15] Mr. Bernier, traveling from Lahore to Kashmir, wrote: "My body is a sieve; scarcely do I swallow a pint of water than I see it come out like a dew from all my members, including my fingertips; I drink ten pints a day and it does me no harm." [François] Bernier, *Travels in the Mogul Empire*, vol. 2, p. 261 ["Journey to Kachemire, Sixth Letter"; p. 388; 1916 edn].

the globules[16] of blood that remain after the dissipation of the watery part.

In cold countries, perspiration releases little of the watery part of the blood; it remains in abundance; therefore one can use spirits there without making the blood coagulate. One is full of humors there; alcoholic beverages, which give motion to the blood, are suitable.

The law of Mohammed that prohibits the drinking of wine is, therefore, a law of the climate of Arabia; thus, before Mohammed, water was the ordinary drink of the Arabs. The law[17] that prohibits the Carthaginians from drinking wine was also a law of the climate; in effect, the climate of these two countries is about the same.

Such a law would not be good in cold countries, where the climate seems to force a certain drunkenness of the nation quite different from drunkenness of the person. Drunkenness is found established around the world in proportion to the cold and dampness of the climate. As you go from the equator to our pole, you will see drunkenness increase with the degree of latitude. As you go from the same equator to the opposite pole, you will find drunkenness to the south,[18] as on our side to the north.

It is natural that excess should be more severely punished where wine is contrary to the climate and consequently to health than in countries where drunkenness has few ill effects for the person, few for the society, and does not make men frenzied, but only dull witted. Thus, the laws[19] that punished a drunken man both for the error committed and for drunkenness were applicable only to drunkenness of the person and not to drunkenness of the nation. A German drinks by custom, a Spaniard by choice.

In hot countries, relaxation of the fibers produces a great perspiration of liquids, but solids dissipate less. The fibers, which have only a very weak action and little spring, are scarcely used; little nutritious juice is needed to repair them; thus, one eats little there.

The differing needs of differing climates have formed differing ways

[16] In the blood there are red globules, fibrous particles, white globules, and the water in which all this swims.

[17] Plato, *Laws*, bk. 2 [674a]; Aristotle, *Oeconomica* [1344a33–34]; Eusebius, *Praeparationes evangelicae*, bk. 12, chap. 17 [12.25.1; 598d].

[18] This is seen among the Hottentots and the peoples at the tip of Chile, who are further to the south.

[19] Like those of Pittacus, according to Aristotle, *Pol.*, bk. 2, chap. 3 [1274b18–23]. He lived in a climate in which drunkenness is not a vice of the nation.

of living, and these differing ways of living have formed the various sorts of laws. If men communicate much with each other in a nation, there must be certain laws; there must be others for a people where there is no communication.

CHAPTER 11

On the laws relating to diseases from the climate

Herodotus[20] tells us that the laws of the Jews about leprosy were drawn from the practice of the Egyptians. Indeed, the same diseases required the same cures. These laws, as well as the illness, were unknown to the Greeks and the first Romans. The climate of Egypt and Palestine made these laws necessary, and the ease with which this disease spread should make us feel clearly the wisdom and foresight of such laws.

We ourselves have suffered the effects of disease. The Crusades brought us leprosy; wise rulings were made that prevented it from spreading to the mass of the people.

One sees in the Law of the Lombards[21] that this disease was widespread in Italy before the Crusades and deserved the attention of legislators. Rotharis ordered that a leper driven from his house and kept in a particular spot could not make disposition of his goods, because he was presumed dead from the moment he was taken from his house. In order to prevent any communication with lepers, they were not allowed to have any possessions.[d]

I think that this disease was brought to Italy by the conquests of the Greek emperors, whose armies may have included militia from Palestine or Egypt. Whatever the case, its progress was checked until the time of the Crusades.

It is said that Pompey's soldiers, on returning from Syria, brought back a disease somewhat like leprosy. No regulation made at that time has come down to us, but it is likely that there were some, for this ill was checked until the time of the Lombards.

[20] [Herodotus, *The Persian Wars*] bk. 2. [Herodotus nowhere mentions the Hebrews, but consider 1.138 (9) for Persian customs concerning leprosy; consider also Leviticus 4.22, 30.]

[21] [*Leges Langobardorum*] bk. 2, tit. 1, para. 3 [Roth. 180] and bk. 2, tit. 18, para. 1 [Roth. 176].

[d] *effets civils.*

Two centuries ago, a disease unknown to our fathers traveled from the New World to this one and came to attack human nature at the very source of life and pleasures. Most of the important families of southern Europe were afflicted by a disease that became so common that it was no longer shameful and was merely deadly. It was the thirst for gold that perpetuated this disease; men continued their voyages to America and brought back new leaven of it each time they returned.

For reasons of piety one wanted to let this be the punishment of the crime, but the disaster had entered marriages and had already corrupted childhood itself.

As it is in the wisdom of legislators to keep watch over the health of the citizens, it would have been very sensible to check the spread of the disease by laws made on the plan of the Mosaic laws.

The plague is an evil whose ravages are even more prompt and rapid. Its principal seat is in Egypt, from which it spreads over the universe. In most of the states of Europe very good regulations have been made to prevent its entry, and in our times a remarkable means has been devised to check it; a line of troops is formed around the infected country, which prevents communication of the disease.

The Turks,[22] who have no police on these matters, see Christians in the same town escape the danger and themselves alone perish. They buy the clothing of those stricken by the plague, wear it, and go their way. The doctrine of a rigid destiny ruling all makes the magistrate a tranquil spectator; he thinks that god has already done everything and that he himself has nothing to do.

[22] [Paul] Rycaut, *The History of the Present State of the Ottoman Empire*, p. 284 [bk. 2, chap. 6; p. 46; 1703 edn].

CHAPTER 12

On laws against those who kill themselves[23]

We see in the histories that the Romans did not inflict death on themselves without cause, but the English resolve to kill themselves when one can imagine no reason for their decisions; they kill themselves in the very midst of happiness. Among the Romans, the act was

[23] The act of those who kill themselves is contrary to natural law and to revealed religion.

the consequence of education; it comes from their way of thinking and their customs: among the English, it is the effect of an illness;[24] it comes from the physical state of the machine and is independent of any other cause.

It is likely that there is a failure in the filtering of the nervous juice; the machine, when the forces that give it motion stay inactive, wearies of itself; it is not pain the soul feels but a certain difficulty in existence. Pain is a local ill which inclines us to the desire to see this pain cease; the weight of life is an illness having no particular place, which inclines us to the desire to see this life end.

It is clear that the civil laws of some countries have had reasons to stigmatize the murder of oneself, but in England one can no more punish it than one can punish the effects of madness.

[24] It could well be complicated by scurvy, which, especially in some countries, makes a man eccentric and intolerable to himself. François Pyrard, *Voyages*, pt. 2, chap. 21 [vol. 2, pt. 2; 3, 391; 1887–1889 edn].

CHAPTER 13

Effects resulting from the climate of England

In a nation whose soul is so affected by an illness of climate that it could carry the repugnance for all things to include that of life, one sees that the most suitable government for people to whom everything can be intolerable would be the one in which they could not be allowed to blame any one person for causing their sorrows, and in which, as laws rather than men would govern, the laws themselves must be overthrown in order to change the state.

For if the same nation had also received from the climate a certain characteristic of impatience that did not permit it to tolerate the same things for long, it can be seen that the government of which we have just spoken would still be the most suitable.

The characteristic of impatience is not serious in itself, but it can become very much so when it is joined to courage.

It is different from fickleness, which makes one undertake things without purpose and abandon them likewise. It is nearer to obstinacy because it comes from a feeling of ills which is so lively that it is not weakened even by the habit of tolerating them.

In a free nation, this characteristic would be one apt to frustrate the projects of tyranny,[25] which is always slow and weak in its beginnings, just as it is prompt and lively at its end, which shows at first only a hand extended in aid, and later oppresses with an infinity of arms.

Servitude always begins with drowsiness. But a people who rest in no situation, who constantly pinch themselves to find the painful spots, could scarcely fall asleep.

Politics is a dull rasp which by slowly grinding away gains its end. Now the men of whom we have just spoken could not support the delays, the details and the coolness of negotiations; they would often succeed in them less well than any other nation, and they would lose by their treaties what they had gained by their weapons.

[25] I take this word to mean the design of upsetting the established power, chiefly democracy. This was its meaning for the Greeks and Romans.

CHAPTER 14

Other effects of the climate

Our fathers, the ancient Germans, lived in a climate where the passions were calm. Their laws found in things only what they saw, and they imagined nothing more. And just as these laws judged insults to men by the size of the wounds, they put no greater refinement in the offenses to women. The Law of the Alemanni[26] on this point is quite singular. If one exposes a woman's head, one will pay a fine of six sous; it is the same for exposing a leg up to the knee; double above the knee. The law, it seems, measured the size of the outrages done a woman's person as one measures a geometric figure; the law did not punish the crime of the imagination, it punished that of the eyes. But when a Germanic nation moved to Spain, the climate required quite different laws. The laws of the Visigoths prohibited doctors from bleeding a *freeborn* woman except in the presence of her father or mother, her brother, her son, or her uncle. The imagination of the peoples was fired, that of the legislators was likewise ignited; the law suspected everything in a people capable of suspecting everything.

Therefore, these laws gave an extreme attention to the two sexes.

[26] [*Leges Alamannorum*] chap. 58, paras. 1–2 [A56.1–2; B58.1–2].

But it seems that in their punishing they thought more of gratifying individual vengeance than of exercising public vengeance. Thus, in most cases they reduced the two guilty ones to the servitude of their relatives or of the offended husband. A freeborn woman [27] who had given herself to a married man was put into the power of his wife, to do with as she wanted. These laws required that slaves[28] bind up and present to the husband his wife whom they had caught in adultery; they permitted her children[29] to accuse her, and they permitted torturing her slaves in order to convict her. Thus these laws were more proper for the excessive refinement of a certain point of honor than for the formation of a good police. And one must not be astonished if Count Julian believed an outrage of this kind required the loss of one's country or of one's king. One should not be surprised that the Moors, whose mores were so similar, found it so easy to establish themselves in Spain, to maintain themselves there, and to delay the fall of their empire.

[27] *Lex Wisigothorum*, bk. 3, tit. 4, para. 9 [3.4.9].
[28] Ibid. [*Lex Wisigothorum*], bk. 3, tit. 4, para. 6 [3.4.6].
[29] Ibid. [*Lex Wisigothorum*], bk. 3, tit. 4, para. 13 [3.4.13].

CHAPTER 15

On the differing trust the laws have in people according to the climate

The Japanese people have such an atrocious character that their legislators and magistrates have not been able to place any trust in them; they have set before the eyes of the people only judges, threats, and chastisements; they have subjected them at every step to the inquisition of the police. These laws that establish, in every five heads of families, one as magistrate over the other four, these laws that punish a whole family or a whole neighborhood for a single crime, these laws that find no innocent men where there can be a guilty one, are made so that all men distrust one another, so that each scrutinizes the conduct of the other, and so that each is his own inspector, witness, and judge.

On the other hand, the people of the Indies are gentle,[30] tender, and

[30] See [François] Bernier [*Travels in the Mogul Empire*], vol. 2, p. 140 ["History of the States of the Great Mogul"; p. 99, 1916 edn].

compassionate. Thus, their legislators have put great trust in them. They have established few penalties,[31] and these are not very severe or even strictly executed. They have given nephews to uncles and orphans to guardians, as elsewhere they are given to their fathers; they have regulated inheritance by the recognized merit of the heir. It seems they have thought that each citizen should rely on the natural goodness of the others.

They easily give liberty[32] to their slaves; they marry them; they treat them like their children:[33] happy is the climate that gives birth to candor in mores and produces gentleness in laws!

[31] See *Lettres édifiantes et curieuses*, vol. 14, p. 403 [Lettre du P. Bouchet, Pontichéry, October 2, 1714; 14, 402–404; 1720 edn] for the principal laws or customs of the peoples of India on the peninsula this side of the Ganges.
[32] Vol. 9 of the *Lettres édifiantes et curieuses*, p. 378 [Lettre du P. Bouchet, 9, 37; 1730 edn].
[33] I had thought that the gentleness of slavery in the Indies had made Diodurus say that in this country there was neither master nor slave, but Diodorus attributed to the whole of India what, according to Strabo [*Geographica*], bk. 15 [15.1.54], was proper only to a particular nation.

BOOK 16

How the laws of domestic slavery are related to the nature of the climate

CHAPTER 1

On domestic servitude

Slaves are established for the family rather than in the family. Thus, I shall distinguish their servitude from that in which women are held in some countries and which I shall call domestic servitude proper.

CHAPTER 2

That, in the countries of the South, there is a natural inequality between the sexes

Women are marriageable in hot climates at eight, nine, and ten years of age; thus, childhood and marriage almost always go together there.[1] They are old at twenty: thus reason in women is never found with beauty there. When beauty demands empire, reason refuses it; when reason could achieve it, beauty exists no longer. Women should be held in dependence, for reason cannot procure for them in their old age an empire that beauty did not give them even in youth. Therefore, when reason does not oppose it, it is very simple there for a man to leave his wife to take another and for polygamy to be introduced.

In temperate countries, where women's charms are better

[1] Mohammed wed Cadigha when she was five, and took her to bed at eight. In the hot countries of Arabia and the Indies, girls are nubile at eight and give birth the following year. [Humphrey] Prideaux, *The True Nature of Imposture Fully Displayed in the Life of Mahomet* [p. 30; 1718 edn]. [M. is in error; he should be referring to Ayesha, not Cadigha.] One sees women in the kingdom of Algeria give birth at nine, ten, and eleven years. Laugier de Tassy, *Histoire du royaume d'Alger*, p. 61 [chap. 2, "Des Habitans du Royaume d'Alger. Des Maures"; p. 61; 1720 edn].

preserved, where they become marriageable later, and where they have children at a more advanced age, their husbands' old age more or less follows on their own; and, as they have more reason and knowledge there when they marry, if only because they have lived longer, a kind of equality between the two sexes has naturally been introduced, and consequently the law permitting only a single wife.

In cold countries, the almost necessary use of strong drink establishes intemperance among the men; so women, who have a natural reserve in this respect because they must always defend themselves, again have the advantage of reason over the men.

Nature, which has distinguished men by strength and by reason, has put no term to their power but the term of their strength and their reason. She has given women charms and has wanted their ascendancy to end with these charms, but in hot countries these are found only at the beginning and never through the course of their lives.

Thus, the law permitting only one wife has more relation to the physical aspect of the climate of Europe than to the physical aspect of the climate of Asia. It is one of the reasons why Mohammedanism found it so easy to establish itself in Asia and so difficult to spread into Europe, why Christianity has been maintained in Europe and destroyed in Asia, and why, finally, the Mohammedans make so much progress in China and the Christians so little. Human reasons are always subordinate to that supreme cause that does all that it wants and makes use of whatever it wants.

Certain reasons peculiar to Valentinian[2] made him allow polygamy in the Empire. That law, which was violent for our climates, was removed by Theodosius, Arcadius, and Honorius.[3]

[2] See Jordanes, *Romana* [#307; *MGH* Auct., vol. 5, p. 39] and the ecclesiastical historians.
[3] See law 7 [*Corpus Juris Civilis*] *Code* [1.9.7]; *de Iudaeis et caelicolis*, and *Novellae* 18, chap. 5 [18.5].

CHAPTER 3

That having multiple wives depends greatly on the support for them

Although a large number of wives depends much on the husband's wealth in countries where polygamy has been established, still one cannot say that wealth causes the establishment of polygamy in a state: poverty can have the same effect, as I shall say when speaking of savages.

In powerful nations polygamy is less a luxury than the occasion for a great luxury. In hot climates, one has fewer needs;[4] it costs less to support a wife and children. Therefore, the number of wives one can have is greater there.

[4] In Ceylon a man lives for ten sous a month; people there eat only rice and fish. *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 2, pt. 1 ["Divers mémoires touchant les Indes Orientales, premier discours"; 2, 258; 1703 edn; 2, 228; 1725 edn].

CHAPTER 4

On polygamy, its various circumstances

According to calculations made in various places in Europe, more boys are born than girls,[5] whereas accounts from Asia[6] and Africa[7] tell us that more girls are born there than boys. Therefore the law permitting only a single wife in Europe and the one permitting several in Asia and in Africa had a certain relation to the climate.

In the cold climates of Asia, as in Europe, more boys are born than girls. This is, say the Lamas,[8] the reason for the law in cold countries that allows a woman here to have several husbands.[9]

[5] Mr. Arbuthnot finds that in England the number of boys exceeds that of girls; it has been mistakenly concluded that it was the same in all climates.

[6] See [Engelbert] Kaempfer, who reports an enumeration of Meaco, in which one finds 182,072 males and 223,573 females [Engelbert Kaempfer, *The History of Japan together with a description of the Kingdom of Siam, 1690–1692*, bk. 2, chap. 5; 1, 332; 1906 edn].

[7] See [William] Smith, *A New Voyage to Guinea*, pt. 2 [pp. 223–224; 1967 edn], on the country of Ante.

[8] [Jean Baptiste] du Halde, vol. 4, p. 46, *Description de l'Empire de la Chine*, ["Observations sur le Thibit," 4, 572 H; 4, 461 P; 4, 443–444 L].

[9] Hasan ibn Yazid, Abu Zaid al Sirafi, one of the two Mohammedan Arabs who went to the

But I do not believe that there are many countries where the disproportion is so great that it requires the introduction of a law permitting several wives or one permitting several husbands. It means only that having many wives or even many husbands is not as far from nature in certain countries as in others.

I admit that if what the accounts tell us were true, that in Bantam[10] there are ten women for every man, it would be a very particular case of polygamy.

In all this I do not justify usages, but I give the reasons for them.

Indies and China in the ninth century, takes this usage for prostitution. This is because nothing else ran so counter to Mohammedan ideas. [Eusèbe Renaudot, *Anciens relations des Indes et de la Chine*, 56–57, 106, 109; 1718 edn.]

[10] *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 1 ["Premier voyage des Hollandais aux Indes Orientales," 1, 383; 1702 edn; 1, 347; 1725 edn].

CHAPTER 5

A reason for a law of Malabar

On the coast of Malabar, in the caste of the Nairs,[11] men can have only one wife, whereas a woman can have several husbands. I believe one can discover the origin of this custom. The Nairs are a caste of nobles who are the soldiers of all these nations. In Europe one keeps soldiers from marrying; in Malabar, where the demands of the climate are greater, one has been content to make marriage as slight an encumbrance as possible for them; one wife has been given to several men, which diminishes to that degree the attachment to a family and the cares of a household and leaves these people their military spirit.

[11] François Pyrard, *Voyage*, chap. 27 [vol. 1, chap. 27; 1, 384, 372; 1887–90 edn]. *Lettres édifiantes et curieuses*, 3 and 10 [Lettre du R. P. Tachard, Pondichéry, February 16, 1702; 3, 187–189; 1713 edn, Lettre du P. de la Lane, Pondichéry, January 13, 1709; 10, 22–23; 1732 edn], on the Malleami of the coast of Malabar. This is regarded as an abuse of the military profession and, as Pyrard says, a woman of the Brahmin caste would never have several husbands.

CHAPTER 6

On polygamy in itself

Considering polygamy in general, independent of the circumstances that can make it somewhat tolerable, it is not useful to mankind or to either of the sexes, either to the one which abuses or to the one abused. Nor is it useful to children; and one of its major drawbacks is that the father and mother cannot have the same affection for their children; a father cannot love twenty children as a mother loves two. It is much worse when a woman has several husbands, for then paternal love depends only on the opinion which a father can believe if he wants, or which others can believe, that certain children belong to him.

It is said that the king of Morocco has in his seraglio white women, black women, and yellow women. The unfortunate man scarcely needs a color!

Possessing many wives does not always prevent one from desiring[12] the wife of another; with avarice as with luxury, thirst increases with the acquisition of treasures.

In the time of Justinian many philosophers who had been hampered by Christianity withdrew to the court of Chosroes in Persia.[a] What struck them most, says Agathias,[13] was that the people to whom polygamy was permitted did not even abstain from adultery.

Having multiple wives (who could guess it!)[b] leads to the love that nature disavows; this is because one sort of dissoluteness always entails another. During the revolution in Constantinople, when the sultan Ahmed was deposed, the accounts told that the people, pillaging the house of the kehaya,[c] found not a single woman. They say that it has come to the point that most of the seraglios in Algiers[14] have none.

[12] This is why women in the East are so carefully hidden.

[13] [Agathias] *Historiarum, On the Life and Actions of Justinian*, p. 403 [2.30].

[14] Laugier de Tassy, *Histoire du royaume d'Alger* [chap. 5, "Des Turcs du Royaume d'Alger"; p. 80; 1720 edn].

[a] This refers to Justinian's closing of the schools of Athens, 526 A.D. *ca.*

[b] Translators' parentheses.

[c] A kehaya was a Turkish viceroy, deputy agent, etc., or a local governor, or a village chief.

CHAPTER 7

On equality of treatment in the case of multiple wives

From the law concerning multiple wives follows the law concerning the equality of their treatment. Mohammed, who permits four, wants everything to be equal among them; food, clothing, and conjugal duty. This law is also established in the Maldives,[15] where one can have three wives.

The law of Moses[16] even wants the man, married by his father to a slave, who later marries a free woman, to deny her nothing in clothing, food, or duties. One could give more to the new wife, but the first was not to have less.

[15] François Pyrard, *Voyages*, chap. 12 [bk. 1, chap. 12; 1, 151; 1887–1889 edn].

[16] Exodus, chap. 21, vv. 10–11 [21.10–11].

CHAPTER 8

On the separation of women from men

One consequence of polygamy is that in the rich and voluptuous nations one has a very great number of wives. Their separation from the men and their enclosure follow naturally from their great number. Domestic order requires it to be so; an insolvent debtor seeks to hide from the pursuit of his creditors. There are climates in which the physical aspect has such strength that morality can do practically nothing. Leave a man with a woman; a temptation is a fall, attack is sure, and resistance null. In these countries there must be bolted doors instead of precepts.

One of China's classics considers it a prodigy of virtue for a man to be alone in a distant apartment with a woman and not do violence to her.[17]

[17] "To come upon a treasure of which one makes oneself master, or a beautiful woman alone in an isolated apartment, to hear the voice of one's enemy who will perish if one does not give aid: admirable touchstone." Translation of a Chinese work on morals, in [Jean Baptiste] du Halde, [*Description de l'Empire de la Chine*], vol. 3, p. 151 ["Caractères ou Moeurs des Chinois," 3, 183 H; 3, 151 P].

CHAPTER 9

A link between domestic government and politics

In a republic, the condition of the citizens is limited, equal, gentle, and moderate; the effects of public liberty are felt throughout. Empire over women could not be as well exercised; and, when climate required this empire, the government of one alone was the most suitable. This is one of the reasons it has always been difficult to establish popular government in the East.

On the other hand, the servitude of women is very much in conformity with the genius of despotic government, which likes to abuse everything. Thus in Asia domestic servitude and despotic government have been seen to go hand in hand in every age. In a government in which one requires tranquility above all and in which extreme subordination is called peace, women must be enclosed; their intrigues would be disastrous for the husband. A government that has not the time to examine the conduct of its subjects is suspicious of it simply because it appears and makes itself felt.

Let us assume for a moment that the fickleness of spirit and indiscretions of our women, what pleases and displeases them, their passions, both great and small, were transfered to an Eastern government along with the activity and liberty they have among us: what father of a family could be tranquil for a moment? Suspects everywhere, enemies everywhere; the state would be shaken, one would see rivers of blood flowing.

CHAPTER 10

Principle of morality in the East

In the case of multiple wives the more the family ceases to be a unity, the more the laws should reunite the detached parts to a center, and the more various the interests, the better it is for the laws to return them to one interest.

This is done chiefly by enclosure. Wives should not only be separated from men by their enclosure in the house, but they should also be separated within that same enclosure, so that each one becomes

almost a particular family within the family. Women's entire practice of morality, modesty, chastity, discretion, silence, peace, dependency, respect, love derives from this; in sum here their feelings are universally directed to that which is best in the world by its nature, which is one's exclusive attachment to one's family.

By nature women have to perform so many duties proper to them that one cannot separate them enough from everything that could give them other ideas, from everything one treats as amusement and from everything one calls business.

In the various states of the East, the mores are purer as the enclosure of women is stricter. In large states, there are necessarily great lords. The greater their means, the more they are in a position to keep women in a strict enclosure and prevent them from returning to society. This is why women have such admirable mores in the empires of the Turks, Persians, Moguls, China and Japan.

One cannot say the same of the Indies, which have been divided into an infinity of little states by the infinite number of islands and the situation of the terrain, and which are rendered despotic by a great number of causes that I have no time to record here.

There, only the destitute plunder and only the destitute are plundered. Those whom one calls important men have only scant means; those whom one calls rich men have scarcely more than their sustenance. The enclosure of women cannot be strict there; one cannot take such careful precautions to contain them; their mores are inconceivably corrupt.

It is there that one sees the point to which the vices of climate, left in great liberty, can carry disorder. There nature has a strength, and modesty, a weakness that is incomprehensible. In Patani,[18] women's lust[19] is so great that men are constrained to make a kind of rigging to shield themselves from women's enterprises. According to Mr. Smith,[20] things are no better in the little kingdoms of Guinea. It seems

[18] *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 2, pt. 2, p. 196 ["Voyage de T. van Neck"; 2, 222; 1703 edn; 2, 192; 1725 edn].

[19] In the Maldives, fathers give their daughters in marriage at the age of ten or eleven because it is a great sin, they say, to let them suffer the need for men. François Pyrard, *Voyages*, chap. 12 [vol. 1, chap. 12; 1, 152; 1887–1890 edn]. In Bantam, as soon as a daughter is thirteen or fourteen, she must be married if she is not to lead a disorderly life. *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, p. 348 ["Voyage des Hollandais aux Indes," 1, 384; 1702 edn; 1, 348; 1725 edn].

[20] [William Smith] *A New Voyage to Guinea*, pt. 2, p. 192 of the translation [pp. 221–222; 1967 edn]. "When the women," he says, "meet a man, they seize him and threaten to

that in these countries, the two sexes lose everything, including the laws proper to them.

denounce him to their husbands if he disregards them. They slip into a man's bed, awaken him, and if he refuses them, they threaten to have him caught in the act."

CHAPTER 11

On domestic servitude independent of polygamy

In certain places in the East, it is not only multiple wives that require their enclosure; it is the climate. Those who read of the horrors, crimes, perfidies, atrocities, poisons, and murders caused by the liberty of women in Goa and in the establishments of the Portuguese in the Indies where religion permits only one wife, and who will compare these to the innocence and purity of the mores of wives in Turkey, in Persia, among the Moguls, in China, and in Japan, will see that it is often as necessary to separate women from men when there is only one wife as when there are many.

It is climate that should decide these things. What would be the use of enclosing wives in our northern countries, where their mores are naturally good, where all their passions are calm, scarcely active, and scarcely refined, where love has such a regulated empire over the heart that the slightest police is sufficient to lead them?

One is fortunate to live in these climates that allow communication between people, where the sex with the most charms seems to adorn society and where women, keeping themselves for the pleasures of one man, yet serve for the diversion of all.

CHAPTER 12

On natural modesty

All nations are equally agreed in attaching scorn to the incontinence of women; this is because nature has spoken to all nations. She has established defense, she has established attack; and, having put desires into both sides, she has placed temerity in the one and shame in the

other. She has given individuals long periods of time to preserve themselves and only brief moments for their perpetuation.

Therefore, it is not true that incontinence follows the laws of nature; on the contrary, it violates them. It is modesty and discretion that follow these laws.

Besides, it is in the nature of intelligent beings to feel their imperfections; therefore, nature has given us modesty, that is, shame for our imperfections.

Therefore, when the physical power of certain climates violates the natural law of the two sexes and that of intelligent beings, it is for the legislator to make civil laws which forcefully oppose the nature of the climate and reestablish the primitive laws.

CHAPTER 13

On jealousy

Among peoples one must distinguish between jealousy that comes from passion and jealousy from custom, mores, or laws. The former is an ardent fever that devours; the latter, cold, but sometimes terrible, can be joined to indifference and scorn.

The first, which is abuse of love, is born of love itself. The other depends solely on the mores, the national manners, the laws of the country, the morality, and sometimes even the religion.[21]

Jealousy is almost always the result of the physical force of the climate, and it is the remedy for this physical force.

[21] Mohammed recommended to his disciples that they keep their wives safe; a certain Iman said the same thing on dying, and Confucius too preached this doctrine. [John Chardin, *Voyages*, "Description du Gouvernment", chap. 12, "Du Palais des femmes du Roi"; 6, 9–10; 1811 edn.]

CHAPTER 14

On household government in the East

One changes wives in the East so frequently that the domestic government cannot be theirs. Therefore, the eunuchs are put in charge of it; they are given all the keys, and they arrange the business of the

house. "In Persia," says M. Chardin, "wives are given their clothing as it would be given to children."[d] Thus that concern which seems to suit them so well, that concern which everywhere else is the first of their concerns, is not theirs.

[d]John Chardin, *Voyages*, "Description du Gouvernment," chap. 12, "Du palais des femmes du roi;" 6,30; 1811 edn.

CHAPTER 15

On divorce and repudiation

A difference between divorce and repudiation is that divorce occurs by mutual consent on the occasion of a mutual incompatibility, whereas repudiation is done by the will and for the advantage of one of the two parties, independently of the will and the advantage of the other.

It is sometimes so necessary for wives to repudiate their husbands and always so trying for them to do it, that it is a hard law that gives this right to men without giving it to their wives. A husband is the master of the house; he has a thousand ways to hold his wives to their duty or to return them to it, and it seems that, in his hands, repudiation is only a new abuse of his power. But a wife who repudiates her husband exercises only a sad remedy. It is always a great misfortune for her to be constrained to go and look for a second husband when she has lost most of her charms while married to another. One of the advantages of youthful charm in wives is that, at an advanced age, a husband is inclined to kindness by the memory of his pleasures.

Therefore, it is a general rule that in all countries where the law grants men the faculty of repudiation, it should also grant it to wives. Further, in the climates where wives live in domestic slavery, it seems that the law should permit wives repudiation and husbands divorce only.

When wives are in a seraglio, the husband cannot repudiate one of them because of the incompatibility of mores; it is the husband's fault if the mores are incompatible.

Repudiation by reason of barrenness can occur only in the case of a single wife;[22] when one has several wives, this reason is not of any importance for the husband.

[22]This does not mean that repudiation by reason of barrenness is permitted in Christianity.

The law of the Maldives[23] allows one to take back a wife one has repudiated. The law of Mexico[24] prohibited them from coming back together on penalty of death. The law of Mexico was more sensible than the law of the Maldives; even at the time of dissolving a marriage, the Mexican law thought about its eternity; whereas the law of the Maldives seems to trifle equally with marriage and repudiation.

The Mexican law granted divorce only. This was an additional reason not to allow people to reunite who had voluntarily separated. Repudiation seems rather to stem from a quickness of spirit and some passion of the soul; divorce seems to be a matter of counsel.

Ordinarily divorce has great political utility, and as for its civil utility, it is established for the husband and the wife and is not always favorable to the children.

[23]François Pyrard, *Voyages* [vol. 1, chap. 12; 1, 153; 1887–1890 edn]. She is taken rather than another because there are fewer expenses in this case.

[24][Antoine de] Solis [y Rivadeneyra], *History of the Conquest [of Mexico by the Spaniards]*, p. 499 [bk. 3, chap. 17; 345–355; 1973 edn].

CHAPTER 16

On repudiation and divorce among the Romans

Romulus allowed the husband to repudiate his wife if she had committed adultery, prepared poison, or tampered with the keys. He did not give wives the right to repudiate their husbands. Plutarch[25] calls this a very harsh law.

As the law in Athens[26] gave the wife as well as the husband the faculty of repudiating, and as one sees that the wives had obtained this right among the earliest Romans in spite of the law of Romulus, it is clear that this institution was one of those brought from Athens by the Roman deputies and that it was put into the Law of Twelve Tables.

Cicero[27] says that the causes of repudiation came from the Law of Twelve Tables. Therefore, one cannot doubt that this law had increased the number of causes for repudiation established by Romulus.

[25][Plutarch, *Vit.*] *Romulus* [22.3].

[26]It was one of Solon's laws.

[27][Cicero] *Philippicae* 2 [2.28.69]. "He has ordered his actress to take up her own property [this constituted divorce]; he based his case on the Twelve Tables" [L.].

The faculty of divorce was also a provision, or at least a consequence of the Law of Twelve Tables. For as soon as the wife or the husband separately had the right of repudiation, they would all the more be able to separate by agreement and by a mutual will.

The law did not require one to give any causes for divorce.[28] This is because, by the nature of the thing, there must be causes for repudiation and not for divorce; for when the law establishes causes that can dissolve a marriage, mutual incompatibility is the strongest of all.

Dionysius of Halicarnassus,[29] Valerius Maximus,[30] and Aulus Gellius[31] report a fact that does not seem probable to me; they say that, although in Rome one had the faculty of repudiating one's wife, there was such respect for the auspices that in 520 years[32] no one had used this right until Carvilius Ruga repudiated his wife as a consequence of her barrenness. But simply knowing the nature of the human spirit is to feel what a prodigy it would be if the law that had given the whole people such a right was used by no one. Coriolanus, on going into exile, counseled his wife to marry a happier man than himself.[33] We have just seen that the Law of Twelve Tables and the mores of the Romans greatly extended the law of Romulus. Why would there be these extensions if one had never used the faculty of repudiating? Moreover, if the citizens had such respect for the auspices that they never repudiated their wives, why would the Roman legislators have had less? How did the law constantly corrupt the mores?

By comparing two passages in Plutarch, one will see the element of marvel in the fact in question disappear. The royal law[34] permitted the husband to repudiate in the three cases mentioned. "And it wanted," says Plutarch,[35] "anyone who repudiated in the other cases to be obliged to give half his goods to his wife and to dedicate the other half to Ceres." Therefore, one could repudiate in any case by submitting to

[28] Justinian changed this. [*Corpus Juris Civilis*] *Novellae* 117, chap. 10 [117.10].
[29] [Dion. Hal., *Ant. Rom.*] bk. 2 [2.25.7].
[30] [Valerius Maximus, *Factorum et dictorum memorabilium*], bk. 2, chap. 4 [2.1.4].
[31] [Aulus Gellius, *Noctium Atticarum*], bk. 4, chap. 3 [4.3].
[32] According to Dion. Hal. [*Ant. Rom.*, 2.25.7] and Valerius Maximus [2.14]; and 523 [231 B.C.] according to Aulus Gellius [*Noctium Atticarum* 4.3.2]; M. has confused his sources: Aulus Gellius and Dionysius of Halicarnassus agree on the date of 231 B.C., Valerius dates the event at 604 B.C.
[33] See the discourse of Veturia, in Dion. Hal. [*Ant. Rom.*], bk. 8 [8.41.4].
[34] Plutarch [*Vit.*], *Romulus* [22.3].
[35] Ibid. [Plutarch, *Vit.*, *Romulus* 22.3.]

the penalty. No one did it before Carvilius Ruga,[36] "who," as Plutarch goes on to say,[37] "repudiated his wife for barrenness 230 years after Romulus;" that is, he repudiated her 71 years before the Law of Twelve Tables, which extended the power to repudiate as well as the causes for repudiation.

The authors to whom I have referred say that Carvilius Ruga loved his wife but that because of her barrenness the censors made him take an oath that he would repudiate her so that he could give children to the republic and that this made him odious to the people. The genius of the Roman people must be known in order to reveal the true cause of the hatred they conceived for Carvilius. Carvilius did not fall into disgrace with the people for repudiating his wife; that is a thing that did not disturb them. But Carvilius had sworn an oath to the censors that, given the barrenness of his wife, he would repudiate her in order to give children to the republic. The people saw that this was a yoke that the censors were going to put on them. I shall show later in this work[38] the repugnance they always had for such regulations. But where could such a contradiction between these authors have begun? Here Plutarch has examined a fact and the others have told of a marvel.

[36] In fact, sterility is not indicated as a cause in the law of Romulus. It seems likely that it was not subject to the penalty of confiscation, as it followed the order of the censors.
[37] In [Plutarch, *Vit.*] *The Comparison of Theseus and Romulus* [6.3].
[38] In bk. 23, chap. 21 [below].

BOOK 17

How the laws of political servitude are related to the nature of the climate

CHAPTER 1

On political servitude

Political servitude depends no less on the nature of the climate than do civil and domestic servitude, as will be shown.

CHAPTER 2

Differences between peoples in relation to courage

We have already said that great heat enervates the strength and courage of men and that there is in cold climates a certain strength of body and spirit that makes men capable of long, arduous, great, and daring actions. This is noticeable not only from nation to nation but even from one part of the same country to another. The peoples of northern China[1] are more courageous than those of the south; the peoples of southern Korea[2] are not as courageous as those of the north.

Therefore, one must not be surprised that the cowardice of the peoples of hot climates has almost always made them slaves and that the courage of the peoples of cold climates has kept them free. This is an effect that derives from its natural cause.

This is also found to be true in America; the despotic empires of Mexico and Peru were near the equator, and almost all the small free peoples were and still are toward the poles.

[1] [Jean Baptiste] du Halde [*Description de l'Empire de la Chine*, "Province de Pe Tcheli"], vol. 1, p. 112 [1, 133–134 H; 1, 112 P; 1, 111 L].

[2] So say the Chinese books. Ibid. [Jean Baptiste du Halde, *Description de l'Empire de la Chine*, "Histoire de la Corée"], vol. 4, p. 448 [4, 557 H; 4, 448 P; 4, 423 L].

CHAPTER 3

On the climate of Asia

Accounts tell us[3]

> that the north of Asia, that vast continent extending from about the fortieth parallel to the pole and from the border of Muscovy to the Eastern Ocean, has a very cold climate; that this immense terrain is divided from west to east by a chain of mountains that puts Siberia to the north and Greater Tartary to the south; that the climate of Siberia is so cold that, although the Russians have settlements along the Irtysh, they cultivate nothing there; that nothing grows in this country but a few small fir trees and shrubs; that the natives of the country are divided into destitute tribes like those of Canada; that the reason for this cold is, on the one hand, the elevation of the terrain, and on the other, that as one goes from south to north the mountains level out and the north wind blows everywhere unobstructed; and that, when this wind that makes Novaya Zemlya uninhabitable blows in Siberia, it makes it a wasteland. In Europe, on the other hand, the mountains of Norway and Lapland are admirable bulwarks shielding the countries of the north from this wind; that thus in Stockholm, which is at about 59 degrees latitude, the terrain can produce fruits, grains, and plants; and that around Abo, which is at 61 degrees north, just as at the 63rd and 64th degree, there are silver mines and the terrain is quite fertile.

We see further in the accounts

> that Greater Tartary, which is to the south of Siberia, is also very cold; that the country is not cultivated; that only pastures for herds are found there; that as in Iceland some bushes but not trees grow there; that close to China and the Moguls there are some countries where a kind of millet grows, but where neither wheat nor rice can ripen; that there are scarcely any spots in Chinese Tartary, at the 43rd, 44th, and 45th parallel, where it does not freeze seven or eight months a year; so that it is as cold as Iceland although it should be warmer than the south of France; that there are no

[3] See the *Receuil de Voyages au Nord*, vol. 8 ["Les moeurs et usages des Ostiackes," 8, 389–392; 1727 edn]; [Ebulgazi Bahadir Han, Khan of Khorezm] *Histoire généalogique des Tatars* [Bentinck's note, pt. 2, chap. 12, "De la tribu des Moguls," 1, 127–129; 1726 edn]; and Father [Jean Baptiste] du Halde, *Description de l'Empire de la Chine*, vol. 4 ["Voiage du Père Gerbillon en Tartarie"; 4, 103–528 H; 4, 87–422 P; 4, 214–380 L].

towns, except four or five near the Eastern Ocean and some that the Chinese have built close to China for political reasons; that in the remainder of Greater Tartary there are only a few located in the Boucharies, Turkistan, and Charizme; that the reason for this extreme cold is found in the nature of the terrain, which is nitrous, full of saltpeter, and sandy, as well as in its elevation. Father Verbiest had found that a certain spot eighty leagues north of the Great Wall, toward the source of the Kavamhuram, that rose three thousand geometric feet above the coast of the ocean near Peking; that this elevation[4] is the cause for the fact that, although almost all the great rivers of Asia have their source in the countryside, it nevertheless lacks water, so it can be inhabited only near the rivers and lakes.

These facts stated, I reason thus: Asia has no temperate zone, properly so called, and the places situated in a very cold climate there are immediately adjacent to those that are in a very warm climate, that is, Turkey, Persia, the Mogul Empire, China, Korea, and Japan.

In Europe, on the other hand, the temperate zone is very broad, although the climates within it are very different from each other, as there is no relation between the climate of Spain and Italy and that of Norway and Sweden. But as the climate there grows colder gradually as one goes from south to north approximately in proportion to the latitude of each country, it happens that there each country is very like its neighbor, that there is not a notable difference between them, and that, as I have just said, the temperate zone is very broad.

From this, it follows that in Asia the strong and weak nations face each other; the brave and active warrior peoples are immediately adjacent to effeminate, lazy and timid peoples; therefore, one must be the conquered and the other the conqueror. In Europe, on the other hand, strong nations face the strong; those that are adjacent have almost the same amount of courage. This is the major reason for the weakness of Asia and the strength of Europe, for the liberty of Europe and the servitude of Asia: a cause that I think has never before been observed. This is why liberty never increases in Asia, whereas in Europe it increases or decreases according to the circumstances.

Although the Muscovite nobility was reduced to servitude by one of its princes, one will always see there marks of impatience that the southern climates do not produce. Did we not see aristocratic govern-

[4]Tartary is, then, a kind of high plateau.

ment established there briefly? Although another kingdom in the north has lost its laws, one can trust to the climate that it has not lost them irrevocably.

CHAPTER 4

A consequence of this

What we have just said agrees with the events of history. Asia has been subjugated thirteen times; eleven times by the peoples of the North, twice by those of the South. In the distant past, the Scythians conquered it three times, then the Medes and the Persians once each; then the Greeks, the Arabs, the Moguls, the Turks, the Tartars, the Persians, and the Afghans. I speak only of upper Asia and I say nothing of the invasions made in the southern part, which has continually suffered great revolutions.

In Europe, on the other hand, we know of only four great changes since the establishment of the Greek and Phoenician colonies: the first, caused by the Roman conquests; the second, by the inundations of the barbarians who destroyed these same Romans; the third, by the victories of Charlemagne; and the last, by the Norman invasions. And, upon examining these closely, one will find that, by these very changes, force was spread generally throughout all the parts of Europe. One knows the difficulty the Romans found in conquering Europe and the ease with which they invaded Asia. One knows the pains the northern peoples had to take to overthrow the Roman Empire, the wars and works of Charlemagne, the various enterprises of the Normans. The destroyers were constantly destroyed.

CHAPTER 5

That, when the peoples of northern Asia and those of northern Europe conquered, the effects of their conquests were not the same

The peoples of northern Europe have conquered as free men; the peoples of northern Asia have conquered as slaves and have been victorious only for a master.

The reason is that the Tartar people, Asia's natural conquerors, have become slaves themselves. They constantly conquer southern Asia, they form empires; but the part of the conquering nation that remains in this country is subject to a great master, who is despotic in the south, who also wants to be so in the north and who, with arbitrary power over the conquered subjects, claims it also over the conquering subjects. This can be seen today in that vast country called Chinese Tartary, which the emperor governs almost as despotically as China itself and which he extends every day by his conquests.

One can also see in the history of China that the emperors[5] sent colonies of Chinese into Tartary. These Chinese became Tartars and mortal enemies of China, but that did not keep them from carrying the spirit of Chinese government into Tartary.

Often a part of the Tartar nation that conquered was itself driven out, and it went back to its deserts with a spirit of servitude acquired in the climate of slavery. The history of China furnishes us with great examples, as does our ancient history.[6]

This is why the genius of the Tartar or Getae nation has always been similar to that of the empires of Asia. The peoples in the latter are governed by the cudgel; the Tartar peoples, by the lash. The spirit of Europe has always been contrary to these mores; and what the peoples of Asia have always called punishment, the peoples of Europe have always called gross offence.[7]

[5] As did Ven-ti [actually Vou-ti], fifth emperor of the fifth dynasty. [Father Jean Baptiste du Halde, *Description de l'Empire de la Chine*, "Fastes de la monarchie chinoise"; 1, 354 H; 1, 384 P; 1, 352 L].

[6] The Scythians conquered Asia three times and were driven out three times. Justin, bk. 2 [*Epitoma historiarum Philippicarum* 2.3].

[7] This is not at all contrary to what I shall say in bk. 28, chap. 20, on the manner of thinking of the German peoples concerning the staff. Whatever instrument it was, they always regarded as an affront the arbitrary power to beat and the action of beating.

When the Tartars destroyed the Greek empire, they established servitude and despotism in the conquered countries; when the Goths conquered the Roman empire, they founded monarchy and liberty everywhere.

I do not know if the famous Rudbeck, who in his *Atlantica*[a] has so praised Scandinavia, has mentioned the great prerogative that should put the nations inhabiting it above all the peoples of the world: it is that they have been the source of European liberty, that is, of almost all of it that there is today among men.

The Goth Jordanes has called northern Europe the manufactory of the human species.[8] I shall rather call it the manufactory of the instruments that break the chains forged in the south. It is there that are formed the valiant nations who go out of their own countries to destroy tyrants and slaves and to teach men that, as nature has made them equal, reason can make them dependent only for the sake of their happiness.

[8] [Jordanes, *Getica*, chap. 4]: "the workshop for the human race" [L.].

[a] Olof Rudbeck, *Atlantica*.

CHAPTER 6

An additional physical cause for the servitude of Asia and the liberty of Europe

In Asia one has always seen great empires; in Europe they were never able to continue to exist. This is because the Asia we know has broader plains; it is cut into larger parts by seas; and, as it is more to the south, its streams dry up more easily, its mountains are less covered with snow, and its smaller rivers[9] form slighter barriers.

Therefore, power should always be despotic in Asia. For if servitude there were not extreme, there would immediately be a division that the nature of the country cannot endure.

In Europe, the natural divisions form many medium-sized states in which the government of laws is not incompatible with the maintenance of the state; on the other hand, they are so favorable to this that without

[9] Waters are lost or evaporate before they converge or after they converge.

laws this state falls into decadence and becomes inferior to all the others.

This is what has formed a genius for liberty, which makes it very difficult to subjugate each part and to put it under a foreign force other than by laws and by what is useful to its commerce.

By contrast in Asia there reigns a spirit of servitude that has never left it, and in all the histories of this country it is not possible to find a single trait marking a free soul; one will never see there anything but the heroism of servitude.

CHAPTER 7

On Africa and on America

This is what I can say about Asia and Europe. Africa has a climate like that of southern Asia, and it has the same servitude. America,[10] destroyed and newly repopulated by the nations of Europe and Africa, can scarcely demonstrate its own genius today, but what we know of its former history is quite in conformity with our principles.

[10]The little barbarian peoples of America are called *Indios bravos* by the Spanish; they are much more difficult to subject than the great empires of Mexico and Peru.

CHAPTER 8

On the capital of the empire

One of the consequences of what we have just said is that it is important to a very great prince to choose well the seat of his empire. He who puts it in the south will run the risk of losing the north, and he who puts it in the north will easily preserve the south. I do not speak of particular cases: as mechanics has its frictions which often change or check its theoretical effects, politics, too, has its frictions.

BOOK 18

On the laws in their relation with the nature of the terrain[a]

CHAPTER 1

How the nature of the terrain influences the laws

The goodness of a country's lands establishes dependence there naturally. The people in the countryside, who are the great part of the people, are not very careful of their liberty; they are too busy and too full of their individual matters of business. A countryside bursting with goods fears pillage, it fears an army. "Who is it that forms the good party?" Cicero asked Atticus.[1] "Is it the people in commerce and in the countryside? Not unless we imagine that the people for whom all governments are equal provided they are tranquil oppose monarchy."

Thus, government by one alone appears more frequently in fertile countries and government by many in the countries that are not, which is sometimes a compensation for them.

The barrenness of the Attic terrain established popular government there, and the fertility of the Lacedaemonian terrain, aristocratic government. For, in those days in Greece, one did not want government by one alone; now, aristocratic government is more closely related to the government by one alone.

Plutarch tells us[2] that "when the sedition of Cylon had been pacified in Athens, the town fell back into its former dissensions and was divided into as many parties as there were sorts of territories in the country of Attica. The people in the mountains wanted popular government at any cost; those of the plains demanded government by

[1] [Cicero, *Epistolae ad Atticum*] bk. 7 [7.7].
[2] [Plutarch, *Vit.*] *Solon* [13.1].

[a] "Terrain," *terrein*, includes the quality of the soil as well as the configuration of the land – flat, hilly, etc.

the principal men; those near the sea were for a government mixing the two."

CHAPTER 2

Continuation of the same subject

The fertile countries have plains where one can dispute nothing with the stronger man: therefore, one submits to him; and, when one has submitted to him, the spirit of liberty cannot return; the goods of the countryside are a guarantee of faithfulness. But in mountainous countries, one can preserve what one has, and one has little to preserve. Liberty, that is, the government they enjoy, is the only good worth defending. Therefore, it reigns more frequently in mountainous and difficult countries than in those which nature seems to have favored more.

The mountain people preserve a more moderate government because they are not as greatly exposed to conquest. They defend themselves easily, they are attacked with difficulty; ammunition and provisions are brought together and transported against them at great expense, as the country provides neither. Therefore, it is more difficult to wage war against them, more dangerous to undertake it, and there is less occasion for all the laws one makes for the people's security.

CHAPTER 3

Which countries are the most cultivated

Countries are not cultivated in proportion to their fertility, but in proportion to their liberty, and if one divides the earth in thought, one will be astonished to see that most of the time the most fertile parts are deserted and that great peoples are in those where the terrain seems to refuse everything.

It is natural for a people to leave a bad country in search of a better and not for them to leave a good country in search of a worse. Therefore, most invasions occur in countries nature had made to be

happy, and as nothing is nearer to devastation than invasion, the best countries most often lose their population, whereas the wretched countries of the north continue to be inhabited because they are almost uninhabitable.

Historians' accounts of the crossing of the Danube by the Scandinavian peoples show that it was not a conquest but only a migration into deserted lands.

Therefore these happy climates had been depopulated by other migrations, and we do not know what tragic things occurred.

"Many records show," says Aristotle,[3] "that Sardinia is a Greek colony. It was formerly rich, and Aristaeus, whose love for agriculture has been so vaunted, gave it laws. But, it has fallen into ruin since then for, when the Carthaginians made themselves masters of it, they destroyed everything that could make it fit to nourish men and prohibited cultivating the land on penalty of death." Sardinia had not recovered in Aristotle's time, nor has it to this day.

The most temperate parts of Persia, Turkey, Muscovy, and Poland have not been able to recover after the devastations of the greater and lesser Tartars.

[3]Or the one who wrote the book [Aristotle, *De mirabilibus auscultationibus* 838b12–29, #100].

CHAPTER 4

Other effects of the fertility and barrenness of a country

The barrenness of the land makes men industrious, sober, inured to work, courageous, and fit for war; they must procure for themselves what the terrain refuses them. The fertility of a country gives, along with ease, softness and a certain love for the preservation of life.

It has been observed that the troops of Germany levied in places where the peasants are rich, as in Saxony, are not as good as the others. Military laws can provide for this drawback by a more severe discipline.

CHAPTER 5

On island peoples

Island peoples are more inclined to liberty than continental peoples. Islands are usually small;[4] one part of the people cannot as easily be employed to oppress the other; the sea separates them from great empires, and tyranny cannot reach them; conquerors are checked by the sea; islanders are not overrun by conquest, and they preserve their laws more easily.

[4]Japan is an exception to this because of its size and its servitude.

CHAPTER 6

On countries formed by the industriousness of men

Countries which have been made inhabitable by the industry of men and which need that same industry in order to exist call for moderate government. There are three principal ones: the two fine provinces of Kiangsu and Chekiang in China, Egypt, and Holland.

The former emperors of China were not conquerors. The first thing that they did to enlarge their country was the one that most demonstrated their wisdom. The finest provinces in the empire were seen to rise from under the water; they were made by men. The indescribable fertility of these two provinces has given Europe its ideas of the felicity of that vast region. But the continuous care necessary to protect such an important part of the empire from destruction required the mores of a wise people rather than those of a voluptuous people, the legitimate power of a monarch rather than the tyrannical power of a despot. Power had to be moderate there, as it was in times past in Egypt. Power had to be moderate there as it is in Holland, which nature made so that attention would be paid to her and that she would not be abandoned to indifference or caprice.

Thus, in spite of the climate of China, where one is by nature inclined to servile obedience, in spite of the horrors that attend an excessively large empire, the first legislators of China were obliged to make very good laws, and the government was often obliged to observe them.

CHAPTER 7

On the works of men

Men, by their care and their good laws, have made the earth more fit to be their home. We see rivers flowing where there were lakes and marshes; it is a good that nature did not make, but which is maintained by nature. When the Persians[5] were the masters of Asia, they permitted those who diverted the water from its source to a place that had not yet been watered to enjoy it for five generations, and, as many streams flow from the Taurus mountains, they spared no expense in getting water from there. Today, one finds it in one's fields and gardens without knowing where it comes from.

Thus, just as destructive nations do evil things that last longer than themselves, there are industrious nations that do good things that do not end with themselves.

[5]Polybius [*Historiae*], bk. 10 [10.28.3–4].

CHAPTER 8

General relation of the laws

The laws are very closely related to the way that various peoples procure their subsistence. There must be a more extensive code of laws for a people attached to commerce and the sea than for a people satisfied to cultivate their lands. There must be a greater one for the latter than for a people who live by their herds. There must be a greater one for these last than for a people who live by hunting.

CHAPTER 9

On the American terrain

There are so many savage nations in America because the land by itself produces much fruit with which to nourish them. If the women cultivate a bit of the earth around their huts, corn grows immediately.

Hunting and fishing complete their abundance. Moreover, grazing animals, like cattle, buffalo, etc., succeed better there than carnivorous beasts. The latter have had dominion in Africa from time immemorial.

I believe one would not have all these advantages in Europe if the earth were left uncultivated; there would be scarcely anything but forests of oak and of other unproductive trees.

CHAPTER 10

On the number of men in relation to their way of procuring subsistence

The number of men in nations that do not cultivate the land is found in the following proportions. As production on an uncultivated terrain is to production on a cultivated terrain, so the number of savages in one country is to the number of plowmen in another, and as for the people who cultivate the land and also cultivate the arts, this follows proportions that would require many details.

They can scarcely form a large nation. If they are herdsmen, they need a large country so that any number of them can continue to exist; if they are hunters, they are still fewer in number and they form, in order to obtain a livelihood, a smaller nation.

Their country is ordinarily full of forests, and as men have not dug canals for water, it is filled with marshes where each band camps and forms a small nation.

CHAPTER 11

On savage peoples and barbarian peoples

One difference between savage peoples and barbarian peoples is that the former are small scattered nations which, for certain particular reasons, cannot unite, whereas barbarians are ordinarily small nations that can unite together. The former are usually hunting peoples; the latter, pastoral peoples. This is clearly seen in northern Asia. The peoples of Siberia could not live together in a body because they could not feed themselves; the Tartars can live together in a body for some

time because their herds can be brought together for that time. All the hordes can, therefore, unite, and this occurs when one leader has subjected many others; after which they must either separate or they must set out to make some great conquest of an empire to the south.

CHAPTER 12

On the right of nations among peoples who do not cultivate the land

As these peoples do not live on a limited and circumscribed terrain, they will have many things to quarrel about; they will dispute over uncultivated land, as our citizens dispute over inheritances. Thus, they will find frequent occasions for war in their hunting, and their fishing, and in providing food for their livestock, and carrying away slaves; and, lacking a territory, they will have so many things to regulate by the right of nations that they will have few to decide by civil right.

CHAPTER 13

On civil laws among peoples who do not cultivate the land

It is the division of lands that principally swells the civil code. In nations that have not been divided there will be very few civil laws.

One can call the institutions of these peoples *mores* rather than *laws*.

In such nations the old men, who remember things past, have great authority; one cannot be distinguished by one's goods there, but by arms and by counsel.

These peoples wander and scatter over the pastures or in the forests. Marriage will not be as secure as among ourselves, where it is fixed by the home and where the wife is attached to a house; they can more easily, therefore, change wives, have several of them, and sometimes mingle indifferently like beasts.

Pastoral peoples cannot be separated from their herds, which provide their subsistence, nor can they be separated from their wives, who take care of them. All this should, therefore, go together; the more so because, as they ordinarily live in great plains where few strongholds

are built, their wives, children, and herds would become the prey of their enemies.

Their laws will regulate the division of the spoils and will, like our Salic laws, pay particular attention to theft.

CHAPTER 14

On the political state of peoples who do not cultivate the land

These peoples enjoy a great liberty: for, as they do not cultivate the land, they are not attached to it; they are wanderers, vagabonds; and if a leader wanted to take their liberty from them, they would immediately go and seek it with another leader or withdraw into the woods to live there with their family. Among these peoples, the liberty of the man is so great that it necessarily brings with it the liberty of the citizen.

CHAPTER 15

On peoples who know the use of money

When Aristippus was shipwrecked, he swam until he reached a nearby shore; he saw geometric figures traced in the sand; he rejoiced, judging that he had arrived among a Greek people and not among a barbarian people.

If you are alone and happen to come by accident to the land of an unknown people and if you see a coin, reckon that you have arrived in a nation with a police.

The cultivation of the land requires the use of money. Cultivation assumes many arts and much knowledge, and one always sees arts, knowledge, and needs keeping pace together. All this leads to the establishment of a sign for value.

Storms and fires led us to discover that the earth contained metals.[6] When they were once separated from the earth, it was easy to use them.

[6]Diodorus [Siculus] [*Bibliotheca historica* 5.35.3] tells us that shepherds found the gold [silver, according to Diodorus] of the Pyrenees in this way.

CHAPTER 16

On civil laws among peoples who do not know the use of money

When a people do not use money, one finds among them scarcely any other injustices but those stemming from violence; and weak people, by uniting, defend themselves from violence. Among them, therefore, there are scarcely any arrangements that are not political. But among a people who have established the use of money, one is subject to the injustices that come from trickery, and these injustices can be exercised in a thousand ways. Therefore, one is forced to have good civil laws there; these arise along with the new means and the various ways of being wicked.

In countries where there is no money, the plunderer carries away only things, and things are never alike. In countries where there is money, the plunderer carries away signs, and signs are always alike. In the former countries nothing can be hidden, because the plunderer always carries with him proofs for his conviction; it is not the same in the latter countries.

CHAPTER 17

On political laws among people who do not use money

What most secures the liberty of peoples who do not cultivate the land is that money is unknown to them. The fruits of hunting, fishing, or herding cannot be brought together in great enough quantity or be protected well enough for one man to be in a position to corrupt all the others; whereas, when one has signs for wealth, these signs can be amassed and distributed to whomever one wants.

Among peoples without money, each man has few needs and satisfies them easily and equally. Equality, therefore, is forced; thus, their leaders are not despotic.

CHAPTER 18

The force of superstition

If what the accounts tell us is true, the constitution of a people of Louisiana called the Natchez is an exception. Their leader[7] controls the disposition of the goods of all his subjects and makes them work according to his fancy; they cannot refuse him their heads; he is like the Grand Signior.[b] When an heir presumptive is born, he is given all the suckling children to serve him during his life. You would say he is the great Sesostris. This leader is treated in his hut with the ceremonies one would give to an emperor in Japan or China.

The prejudices of superstition are greater than all other prejudices, and its reasons greater than all other reasons. Thus, although savage peoples do not know despotism naturally, these people know it. They worship the sun, and if their leader had not imagined that he was the brother of the sun, they would have found in him only a poor wretch like themselves.

[7] *Lettres édifiantes et curieuses*, 20 [Lettre du P. Le Petit, la Nouvelle-Orléans, July 12, 1730; vol. 20, 106–113; 1731 edn].

[b] The Turkish emperor.

CHAPTER 19

On the liberty of the Arabs and the servitude of the Tartars

The Arabs and Tartars are pastoral peoples. The Arabs belong to the general case we have mentioned and are free; whereas the Tartars (the most singular people on earth) are in political slavery.[8] I have already[9] given some reasons for this last fact: here are some others.

They have no towns, they have no forests, they have few marshes; their rivers are almost always frozen; they live in an immense plain; they have pastures and herds and consequently goods; but they have no place of retreat or defense. As soon as a khan is vanquished, his head is

[8] When a khan is proclaimed, all the people shout, "May his word serve him as a sword!"
[9] Bk. 17, chap. 5 [above].

cut off,[10] so are his children's, and all his subjects belong to the vanquisher. They are not condemned to a civil slavery; they would be burdensome to a simple nation which has no land to cultivate and no need of domestic service. Therefore, they increase the nation. But one conceives that political slavery instead of civil slavery has had to appear.

Indeed, in a country where the various hordes are continually at war and constantly conquer one another, where the political body of each vanquished horde is always destroyed by the death of the leader, the nation in general can scarcely be free, for there is not a single part of it that must not have been subjugated a great many times.

Vanquished peoples can preserve some liberty, when, by the strength of their situation, they are in a position to make treaties after their defeat. But the Tartars, always defenseless, once vanquished have never been able to make conditions.

I have said in Chapter 2 that the inhabitants of cultivated plains were scarcely free; circumstances put the Tartars, who live in a wasteland, in the same situation.

[10] Thus one must not be astonished if Mir Vais [actually Mir Vais' son Mir Mahaud], after making himself master of Ispahan, had all the princes of the blood killed.

CHAPTER 20

On the right of nations among the Tartars

The Tartars appear gentle and humane to each other, and they are very cruel conquerors; they put to the sword the inhabitants of the towns they take; they believe themselves merciful when they sell or distribute the inhabitants to their soldiers. They have destroyed Asia from the Indies to the Mediterranean; the whole country that forms eastern Persia has become deserted on account of them.

Here is what seems to me to have produced such a right of nations. These peoples had no towns at all; all their wars were waged quickly and impetuously. When they expected to vanquish, they fought; they joined the stronger army when they did not expect to win. With such customs, they found that it was contrary to their right of nations for a town that could not resist them to check them: they did not consider a town as an assembly of inhabitants, but as a place apt to escape their

power. They had no art for besieging towns, and they exposed themselves greatly when they did so; they took blood revenge for all the blood they had spilled.

CHAPTER 21

Civil law of the Tartars

Father du Halde says that, among the Tartars, it is always the last male child who inherits, because as the older ones gradually reach a position to lead the pastoral life, they leave their house with a certain quantity of livestock given them by their father and go to build a new dwelling. Therefore, the last of the males remaining in the house with his father is his natural heir.

I have heard it said that a similar custom was observed in some small districts in England, and it is still found in Brittany in the Duchy of Rohan, where it applies to commoners. No doubt it is a pastoral law that came from some lesser Breton people or was brought by some Germanic people. It is known from Caesar and Tacitus that these latter cultivated the land but little.

CHAPTER 22

On a civil law of the Germanic peoples

I shall explain here how a particular text from Salic Law, the text usually called the Salic Law, concerns the institutions of a people who did not cultivate the land, or at least cultivated it but little.

When a man leaves children, the Salic Law[11] wants the males to inherit the Salic land in preference to the daughters.

In order to know what these Salic lands were, one must discover what property was and what the use of the land was among the Franks before they left Germany.

M. Eckhart has nicely proven that the word Salic comes from the word *sala*, which means house, and thus that the Salic land was the land

[11] [*Lex Salica*] tit. 62 [D93; S34].

around the house.[c] I shall go further and examine what were the house and the land around the house among the Germans.

"They do not live in towns," says Tacitus,[12] "and they cannot tolerate their houses touching one another; each leaves around his house a small parcel of ground or a space which is enclosed and shut in." Tacitus spoke correctly. For, many laws in the barbarian codes[13] have different provisions for those who knocked down this enclosure, and for those who entered the house itself.

We know from Tacitus and Caesar that the lands the Germans cultivated were given to them for only a year, and then became public again. The Germans had no patrimony other than the house and a bit of land within the enclosure around the house.[14] This particular patrimony belonged to the males. Indeed, why would it have belonged to the daughters? They entered other houses.

Therefore, the Salic land was that enclosure appended to the German's house; it was the only property he had. After the conquest the Franks acquired new properties, which continued to be called Salic lands.

When the Franks lived in Germany, their goods were slaves, herds, horses, arms, etc. The house and the small portion of land adjoining it were naturally given to the male children who were to live there. But, when the Franks had acquired extensive lands after the conquest, it was found harsh that the daughters and their children could not have a share. A usage was introduced which permitted the father to recall his daughter and his daughter's children. The law was silenced, and these sorts of recalls must have been common because formulas were made for them.[15]

Among all these formulas, I find a singular one.[16] A grandfather

[12] [Tacitus] *Germania* [16]: "It is well known that the peoples of Germany have no cities, nor do they even permit their houses to be joined one to another. They live separate and scattered where a fountain, a field, or a glade has attracted them. They do not establish their villages in our fashion with the buildings being connected and joined together; instead, each home is surrounded by an open space" [L.].

[13] *Leges Alamannorum*, chap. 10 [A9; B10] and *Lex Baiwariorum*, tit. 10, paras. 1–2 [11.1–2].

[14] This enclosure is called *curtis* in the charters.

[15] See Marculf [*Marculfi formulae*], bk. 2, form. 10 and 12 [2.10, 12]; *Appendice de Marculfe*, form. 49 [*Cartae Senonicae*, 45]; and the old formulas, known as "Sirmondi's," form. 22 [*Formulae Turonenses vulgo Sirmondicae dictae* 22].

[16] *Formulae Salicae Lindenbrogianae*, form. 55 [12].

[c] Johann Georg von Eckhart, *Leges Francorum Salicae et Ripuariae*, pp. 20, 42, 44, 56; 1720 edn.

recalls his grandchildren to inherit with his sons and daughters. What had the Salic Law become? It must have been no longer observed, even at that time, or the continual usage of recalling daughters must have qualified them to inherit in the most ordinary case.

As the Salic Law did not have as its purpose a preference for one sex over another, it had still less that of perpetuating a family, a name, or a transfer of land; none of this entered the heads of the Germans. It was a purely economic law which gave the house and the land around it to the males who were to live in it and for whom consequently it was best suited.

One need only transcribe here the article, *On Alloidal Lands* in the Salic Law, that famous text so talked about and so little read:

1. "If a man dies without children, his father or his mother will inherit from him. 2. If he has neither father nor mother, his brother or sister will inherit from him. 3. If he has neither brother nor sister, his mother's sister will inherit from him. 4. If his mother has no sister, his father's sister will inherit from him. 5. If his father has no sister, the nearest relative on the male side will inherit. 6. No portion[17] of the Salic land will pass to the females, but it will belong to the males, that is, the male children will inherit from their father."

It is clear that the first five articles concern the inheritance of one who dies without children; and the sixth, the inheritance of one who has children.

When a man died without children, the law wanted one sex to be preferred over the other only in certain cases. In the first two degrees of inheritance, the advantages of males and females were the same; in the third and fourth, women were preferred; males were preferred in the fifth.

I find the seeds of these eccentricities in Tacitus. "The children of sisters,"[18] he says, "are cherished by their uncle as by their own father. There are some people who consider this bond as closer and even holier; they prefer it when they take hostages." This is why our first

[17] "No portion of the Salic lands will pass as inheritance to women, but it will be acquired by the male sex, that is, the sons shall succeed to the inheritance" [L.]. [*Pactus legis Salicae*], tit. 62, para. 6 [59.6].

[18] "The sons of sisters are held in the same honor by uncles as by the father. Indeed, some judge this blood tie as more sacred and binding, and demand them more often when taking hostages, thinking to have a firmer and more extensive hold upon their spirits and household" [L.]. [Tacitus] *Germania* [20].

historians[19] tell us so much about the love of the Frankish kings for their sister and their sister's children. For if the children of sisters were regarded in the brother's house as his own, it was natural for the children to regard their aunt as their own mother.

The mother's sister was preferred to the father's sister; this is explained by other texts of the Salic law; when a woman was a widow,[20] she came under the guardianship of her husband's relatives; the law preferred the female relatives to the male relatives for this guardianship. Indeed, a woman who entered a family and joined those persons of her sex was closer to the female relatives than to the male relatives. Moreover, when one man had killed another man[21] and could not satisfy the pecuniary penalty he incurred, the law permitted him to cede his goods, and his relatives had to make up what was lacking. After his father, mother, and brother, it was the mother's sister who paid, as if this bond had something more tender about it; now, the kinship that gives burdens had likewise to give advantages.

The Salic Law wanted the closest male relative after the father's sister to have the inheritance, but if he were a relative beyond the fifth degree, he would not inherit it. Thus, a woman of the fifth degree would have inherited in preference to a man of the sixth; and this is seen in the law of the Ripuarian Franks,[22] a faithful interpreter of the Salic Law in the article concerning allodial lands, where it follows step by step the same article of that law.

If the father left children, the Salic Law wanted the daughters to be excluded from the inheritance of the Salic land and wanted this to belong to the male children.

It would be easy for me to prove that the Salic law did not exclude daughters from the Salic land without distinction, but rather only in the case where brothers would exclude them. This is seen in the Salic law itself, which, after saying that the women would possess nothing of the Salic land and that only men would, interprets and restrains itself; "that is," it says, "the son will inherit the father's legacy."

[19] See in Gregory of Tours [*Historia ecclesiastica*] bk. 8, chaps. 18 and 20, and bk. 9, chaps, 16 and 20 [8.18.28; 9.16.20], Guntram's fury at the ill treatment done Ingunda, his niece, by Lenvigilda, and how Childebert, his brother, made war to avenge her.

[20] *Lex Salica*, tit. 47 [D79; S24].

[21] *Lex Salica*, tit. 61, para. 1 [D100; S17].

[22] "And then in succession up to the fifth degree, whoever is closer will succeed to the inheritance" [L.]. [*Lex Ribuaria*] tit. 56, para. 6 [57.3].

2. The text of the Salic law is clarified by the law of the Ripuarian Franks, which has also an article[23] on alloidal lands quite in conformity with the Salic Law.

3. The laws of these barbarian peoples, who all come from Germany, interpret each other; the more so because they all have nearly the same spirit. The law of the Saxons[24] wants the father and mother to leave their inheritance to their son and not to their daughter, but if there are only daughters, it wants them to have the entire inheritance.

4. We have two old formulas,[25] which propose the case in which, in accord with the Salic Law, daughters are excluded by the males: this is when they compete with their brother.

5. Another formula[26] proves that the daughter inherited in preference to the grandson; therefore, she was excluded only by the son.

6. If the daughters had been generally excluded from the inheritance of lands by the Salic Law, it would be impossible to explain the histories, formulas, and charters, which continually speak of the lands and goods of women under the Merovingians.[d]

It has been mistakenly said[27] that the Salic lands were fiefs. 1. This article is entitled, *On Alloidal Lands*. 2. In the beginning fiefs were not hereditary. 3. If the Salic lands had been fiefs, how could Marculf have treated as impious the custom which excluded women from inheriting them, for even males did not inherit fiefs? 4. The charters that are cited to prove that the Salic lands were fiefs prove only that they were free lands.[e] 5. Fiefs were established only after the conquest, and Salic usages existed before the Franks left Germany. 6. It was not the Salic Law that, by limiting the inheritance of women, formed the establishment of fiefs, but rather the establishment of fiefs that put limits on both the inheritance of women and the provisions of the Salic Law.

[23] [*Lex Ribuaria*] tit. 56 [57].

[24] [*Leges Saxonum*] tit. 7, para. 1 [41]. "The father and mother being dead, they shall leave the inheritance to the son, not the daughter" [L.]; para. 4 [44] "They being dead having no sons but leaving only a daughter, the entire inheritance belongs to her" [L.].

[25] In Marculf, bk. 2, form. 12 [*Marculfi Formulae* 2.12], and the *Appendice de Marculfe*, form. 49 [*Cartae Senonicae* 45].

[26] In *Formulae Salicae Lindenbrogianae*, form. 55 [12].

[27] Du Cange, Pithou, etc.

[d] Montesquieu calls the ruling families of France the "First," "Second," and "Third Race." We refer to them as the Merovingians, Carolingians, and Capetians. See also note [j], bk. 23.

[e] *terres franches*. Occasionally Montesquieu uses *franc*, meaning "free"; the instances are marked in these notes.

After what we have just said, one would not believe that the personal inheritance by males of the crown of France could come from the Salic Law. It is, however, indubitable that it comes from there. I can prove this by the various codes of the barbarian peoples. The Salic law[28] and the law of the Burgundians[29] did not give daughters the right to inherit land with their brothers, nor did they inherit the crown. The law of the Visigoths,[30] on the other hand, permitted daughters[31] to inherit land with their brothers; women were qualified to inherit the crown. Among these peoples, the provisions of the civil law forced the political law.[32]

This was not the only case among the Franks where the political law gave way to the civil law. By the provision of the Salic Law, all brothers inherited the land equally, and this was also the provision of the law of the Burgundians. Thus, in the Frankish monarchy and in that of the Burgundians, all the brothers inherited the crown, if we except a few cases of violence, murder and usurpation among the Burgundians.

[28] [*Lex Salica*] tit. 62 [D93; S34].

[29] [*Leges Burgundionum*] tit. 1, para. 3; tit. 14, para. 1; tit. 51 [1.3; 14.1; 51].

[30] [*Lex Wisigothorum*] bk. 4, tit. 2, para. 1 [4.2.1].

[31] The German nations, says Tacitus, had some usages in common; they also had some particular ones. [*Germania* 27.]

[32] Among the Ostrogoths, the crown passed twice from women to men: once through Amalasuntha, in the person of Athalaric, and once through Amalafrede, in the person of Theodohad. It is not that, among them, women could not reign for themselves: Amalasuntha, after the death of Athalaric, reigned, and reigned even after the election of Theodohad and concurrently with him. See the letters of Amalasuntha and those of Theodohad, in Cassiodorus [*Variae*], bk. 10.

CHAPTER 23

On the long hair of the Frankish kings

Peoples who do not cultivate the land do not have even the idea of luxury. The admirable simplicity of the Germanic peoples must be seen in Tacitus; art did not fashion their ornaments, they found them in nature. If the family of their leader was to be marked by some sign, it was again in nature that they had to seek it; the kings of the Franks, Burgundians, and Visigoths wore their long hair as a diadem.

CHAPTER 24

On the marriages of the Frankish kings

I have mentioned earlier that, among peoples who do not cultivate the land, marriages were much less fixed and one ordinarily took several wives. "The Germans were almost alone[33] among the barbarians to be content with a single wife, if one excepts,"[34] says Tacitus, "some persons who, not because of their dissoluteness, but because of their nobility, had many."

This explains why the Merovingian kings had such a great number of wives. These marriages were less an evidence of incontinence than an attribute of rank; it would have wounded them in a tender spot to make them lose such a prerogative.[35] This explains why the example of the kings was not followed by their subjects.

[33] "Almost alone among the barbarians they are content with one wife" [L.]. [Tacitus] *Germania* [18].
[34] "Except for a very few who are sought for numerous marriages, not on account of lust, but rather for their nobility" [L.]. Ibid. [Tacitus, *Germania*, 18].
[35] See Fredegarius' *Chronicon* for *anno* 628 [chap. 58].

CHAPTER 25

Childeric

"Marriages among the Germans are severe;"[36] says Tacitus, "vices are not subject to ridicule there; to corrupt or to be corrupted is not called a usage or a way of life; in so numerous a nation there are few examples[37] of the violation of conjugal faith."

This explains the expulsion of Childeric; he offended the strict mores that conquest had not had time to change.

[36] "A severe code for marriage . . . No one laughs at vice; no one says it is the spirit of the times to corrupt and be corrupted" [L.]. [Tacitus] *Germania* [18, 19].
[37] "Among such a numerous people, adultery is very rare" [L.]. Ibid. [Tacitus, *Germania*, 19].

CHAPTER 26

On the coming of age of the Frankish kings

Barbarian peoples who do not cultivate the land have no territory properly so-called and are, as we have said, governed by the right of nations rather than by civil right. Therefore, they are almost always armed. Thus Tacitus says that "the Germans engaged in no public or particular matters of business without being armed.[38] They expressed their view by a sign they made with their weapons.[39] As soon as they could carry weapons they were presented to the assembly;[40] a javelin was put in their hands;[41] from this time on they had left behind their childhood;[42] they had been a part of the family, they became part of the republic."

"Eagles," said the king of the Ostrogoths,[43] "stop giving food to their little ones as soon as their feathers and claws are formed; these little ones no longer need the help of others when they themselves go in search of prey. It would be shameful if our youth who are in our armies were presumed to be too weak to control their own goods or regulate the conduct of their lives. Among the Goths it is virtue that sets the coming of age."

Childebert II was fifteen years old[44] when Guntram, his uncle, declared him of age and capable of governing by himself. One sees in the law of the Ripuarian Franks that this age of fifteen years, the ability to carry arms, and the time of one's coming of age go together. "If a Ripuarian has died or has been killed," it is said there,[45] "and he has left a son, the son cannot go in pursuit, or be pursued in judgment,

[38] "They act upon no business, public or private, unless they are armed" [L.]. Tacitus, *Germania* [13].
[39] "If the opinions are displeasing, they are spurned; if pleasing, they shake their spears" [L.]. Ibid. [Tacitus, *Germania*, 11].
[40] "It is not the custom for one to take up arms before the state has approved his competence" [L.]. [Tacitus, *Germania*, 13].
[41] "Then, in the council itself, either some prince or his father, or kinsman, equips the youth with a shield and spear" [L.]. [Tacitus, *Germania*, 13.]
[42] "These [arms] are what the toga is to us, the first honor of youth; before, he is part of the household; afterward, part of the republic" [L.] [Tacitus, *Germania*, 13].
[43] Theodoric, in Cassiodorus [*Variae*], bk. 1, letter 38 [1.38].
[44] He was scarcely more than five, says Gregory of Tours [*Historia ecclesiastica francorum*], bk. 5, chap. 1 [5.1], when he succeeded to his father in 575; that is, he was five. Guntram declared him of age in 585; then he was fifteen.
[45] [*Lex Ribuaria*] tit. 81 [84].

unless he is fully fifteen years old; at that time he will answer for himself or choose a champion." The spirit had to be sufficiently formed for one to be able to defend oneself in a judgment, and the body, for one to be able to defend oneself in combat. Among the Burgundians,[46] who also had the usage of combat in judicial actions, the coming of age was also set at fifteen years.

Agathias tells us that the weapons of the Franks were light; therefore, they could come of age at fifteen. Later, weapons were heavier; they were already so in the time of Charlemagne, as is apparent in our capitularies and romances. Those who had fiefs,[47] and who consequently had to do military service, came of age only when they were twenty-one.[48]

[46] [*Leges Burgundionum*] tit. 87 [87.1].
[47] There was no change for common men [*roturiers*].
[48] St. Louis came of age only then. This was changed by an edict of Charles V, in 1374. [*Recueil general des anciennes lois françaises*, #546; 5, 415–424; 1824 edn.]

CHAPTER 27

Continuation of the same subject

It has been seen that among the Germans one did not go to the assembly before reaching one's majority; one was part of the family and not part of the republic. This caused the children of Clodomir, King of Orleans and conqueror of Burgundy, not to be declared kings because they could not be presented to the asembly at their tender age. They were not yet kings, but they were to become kings when they were able to carry weapons; and, meanwhile Clotilda, their grandmother, governed the state.[49] Their uncles Clotaire and Childebert slaughtered them and divided their kingdom. Because of this example later princes who were wards were declared king immediately after the death of their fathers. Thus, Duke Gondovald saved Childebert II from the cruelty of Chilperic and had him declared king[50] at the age of five.

[49] It appears in Gregory of Tours, *Historia ecclesiastica Francorum*, bk. 3 [3.17], that she chose two men from Burgundy, which had been conquered by Clodomir, to be put on the throne at Tours, which was also in Clodomir's kingdom.
[50] Gregory of Tours [*Historia ecclesiastica Francorum*], bk. 5, chap. 1 [5.1]: "Although scarcely five years old, he began to rule on Christmas Day" [L.].

But, even with this change, one followed the first spirit of the nation, and acts were not passed in the name of kings who were wards. Thus, among the Franks there was a double administration, the one concerning the person of the king who was a ward and the other concerning the kingdom; and in the fiefs there was a difference between guardianship and bailiffry.

CHAPTER 28

On adoption among the Germans

As, among the Germans, one came of age on receiving weapons, one was adopted by the same sign. Thus, Guntram, wanting to declare his nephew Childebert of age and also to adopt him, told him, "I put[51] this javelin in your hands as a sign that I have given you my kingdom." And, turning to the assembly, "You see that my son Childebert has become a man; obey him." When Theodoric, king of the Ostrogoths, wanted to adopt the king of the Heruli, he wrote to him:[52]

> it is a fine thing we have, that we can adopt by weapons, for courageous men are the only ones who are worthy of becoming our children. There is such a force in this act that the one who is the object of it will always prefer to die than to suffer something shameful. Thus, by the custom of nations, and because you are a man, we adopt you by these shields, these swords, and these horses that we are sending you.

[51] See Gregory of Tours [*Historia ecclesiastica Francorum*], bk. 7, chap. 23 [7.33].
[52] In Cassiodorus [*Variae*] bk. 4, letter 2 [4.2].

CHAPTER 29

The bloodthirsty spirit of the Frankish kings

Clovis was not the only prince among the Franks who undertook expeditions into Gaul; many of his relatives had led certain tribes there, and as he had greater success and could give important establishments to those who had followed him, the Franks flocked to him from all the

tribes and the other leaders found themselves too weak to resist him. He formed the design of exterminating all those of his house and succeeded at it.[53] He feared, said Gregory of Tours,[54] that the Franks might take another leader. His children and his successors followed this practice as much as they could: the brother, the uncle, the nephew (what can I say?),[f] the son, the father, were seen constantly conspiring against the rest of the family. The law constantly divided the monarchy; fear, ambition, and cruelty wanted to reunite it.

[53] Gregory of Tours [*Historia ecclesiastica Francorum*], bk. 2 [2.42].
[54] Ibid. [Gregory of Tours, *Historia ecclesiastica Francorum* 2.42].

[f] Translators' parentheses.

CHAPTER 30

On the national assemblies among the Franks

It has been mentioned earlier that peoples who do not cultivate the land enjoyed a great liberty. This was the case for the Germans. Tacitus says that they gave their kings or leaders only a very moderate power,[55] and Caesar says[56] that they had no common magistrate during peacetime but that in each village the princes rendered justice among their own. Thus, in Germany the Franks had no king, as Gregory of Tours[57] proves nicely.

"Princes,"[58] says Tacitus, "deliberate on small things, the entire nation on large things, in such a way, however, that the matters that are within the cognizance of the people are also carried to the princes." This usage was preserved after the conquest, as is seen in all the records.[59]

[55] "The kings have neither unlimited nor unbounded power [. . .]. Moreover, neither to punish, to put in bonds, nor to flog, etc." [L.]. [Tacitus] *Germania* [chap. 7].
[56] "During peacetime there is no common magistrate; instead, the princes of the region and cantons give justice among their own people" [L.]. [Gaius Julius Caesar] *De bello Gallico*, bk. 6 [6.23].
[57] [Gregory of Tours, *Historia ecclesiastica Francorum*] bk. 2 [2.9].
[58] "On lesser issues, only the princes consult, on greater ones, everyone; but even when it is a decision within the power of the people, first it is thoroughly considered by the princes" [L.] [Tacitus] *Germania* [chap. 11].
[59] "Law is made by the consensus of the people and the constitution of the king" [L.]. Capitularies of Charles the Bald, *anno* 864, art. 6 [*CRF*, 273.6].

Tacitus[60] says that capital crimes could be brought before the assembly. It was the same after the conquest, and the great vassals were judged there as well.

[60] "In their council it is permitted to consider the accusation of a capital crime" [L.] [Tacitus] *Germania* [12].

CHAPTER 31

On the authority of the clergy under the Merovingians

Among barbarian peoples, priests ordinarily have power because they have both the authority, which religion should give them, and the power which superstition gives among such peoples. Thus, we see in Tacitus that the priests were highly esteemed among the Germans and that their presence introduced a police[61] into the assembly of the people. They were permitted only[62] to chastise, to bind, and to strike, which they did, not by order of the prince, or to inflict a penalty, but as by divine inspiration, ever present in those who wage war.

One must not be surprised if, from the beginning of the reign of the Merovingians, bishops are seen to be arbiters[63] of judgments, if they are seen appearing in the national assemblies, if they greatly influence the resolution of the kings, and if they are given so many goods.

[61] "Silence is commanded by the priests who have the right to keep order" [L.]. [Tacitus] *Germania* [11].
[62] "The kings have neither unlimited nor unbounded power [. . .]. Moreover, it is only permitted to priests to punish, to put in bonds, or to flog; and this is done, not as if it were a penalty, or as an order from the leader, but by the command of God, as it were, whom they believe to be present in the warrior" [L.]. Ibid. [Tacitus, *Germania*, 7.]
[63] See *Chlotharii regis constitutio generalis*, *anno* 560, art. 6 [*CRF*, 8.6].

BOOK 19

On the laws in their relation with the principles forming the general spirit, the mores, and the manners of a nation

CHAPTER 1

On the subject of this book

This material is very extensive. In this crowd of ideas that present themselves in my spirit, I shall be more attentive to the order of things than to the things themselves. I must push things away, break through, and bring my subject to light.

CHAPTER 2

How much it is necessary for spirits to be prepared for the best laws

Nothing appeared more intolerable to the Germans[1] than the tribunal of Varus. The one that Justinian set up among the Laxians[2] in order to try the murderer of their king seemed to them a horrible and barbarous thing. Mithridates,[3] inveighing against the Romans, reproached them above all for the formal procedures[4] of their justice. The Parthians could not tolerate this king who, having been raised in Rome, made himself affable[5] and accessible to everyone. Even liberty has appeared

[1] They cut out lawyers' tongues and said, "Viper, stop hissing." Tacitus. [Not Tacitus but Florus, *Epitome rerum Romanorum* 2.30.37; 4.12.37.]
[2] Agathias [*Historiarum*], bk. 4 [4.1–10].
[3] Justin [*Epitoma historiarum Philippicarum*], bk. 38 [38.4–7].
[4] *Calumnias litium*: "false in litigation." Ibid. [Justin, *Epitoma historiarum Philippicarum* 38.7.8].
[5] Tacitus [*Annales* 2.2], "The ease with which he could be approached, his affability, were virtues unknown to the Parthians and instead they seemed to be new vices" [L.].

intolerable to peoples who were not accustomed to enjoying it. Thus is pure air sometimes harmful to those who have lived in swampy countries.

When in Pegu, a Venetian named Balbi was brought to the king.[6] When the latter learned that there was no king in Venice, he laughed so much that he began to cough and could scarcely talk to his courtiers. What legislator could propose popular government to such peoples?

[6] He described it in 1596. *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 3, pt. 1, p. 33. ["Relation du second voiage d'Etienne van der Hage," 3, 30; 1705 edn; 3, 28; 1725 edn.]

CHAPTER 3

On tyranny

There are two sorts of tyranny: a real one, which consists in the violence of the government, and one of opinion, which is felt when those who govern establish things that run counter to a nation's way of thinking.

Dio says that Augustus wanted to be called Romulus, but that, on learning that the people feared that he wanted to make himself king, he changed his design. The first Romans did not want a king because they could not suffer his power; the Romans of the time of Augustus did not want a king in order not to suffer his manners. For, although Caesar, the triumvirs, and Augustus were real kings, they had preserved an appearance of equality and in their private lives they seemed opposed to the kingly pomp of that time; and, when the Romans did not want a king, this meant that they wanted to keep their own manners and not take on those of African and Eastern peoples.

Dio[7] tells us that the Roman people were very angry with Augustus because of certain laws he had made which were too harsh, but that their discontent ceased as soon as he brought back the actor Pylades, who had been driven out of the town by the factions.[a] Such a people felt tyranny more vividly when a buffoon was driven out than when all their laws were taken from them.

[7] [Cass. Dio, *Historia Romana*] bk. 54, p. 532 [53.16.7, on Romulus; 54.17.4–5, on Pylades].

[a] These factions were based on the allegiances of the fans of the circus.

CHAPTER 4

What the general spirit is

Many things govern men: climate, religion, laws, the maxims of the government, examples of past things, mores, and manners; a general spirit is formed as a result.

To the extent that, in each nation, one of these causes acts more forcefully, the others yield to it. Nature and climate almost alone dominate savages; manners govern the Chinese; laws tyrannize Japan; in former times mores set the tone in Lacedaemonia; in Rome it was set by the maxims of government and the ancient mores.

CHAPTER 5

How careful one must be not to change the general spirit of a nation

If there were in the world a nation which had a sociable humor, an openness of heart; a joy in life, a taste, an ease in communicating its thoughts; which was lively, pleasant, playful, sometimes imprudent, often indiscreet; and which had with all that, courage, generosity, frankness, and a certain point of honor, one should avoid disturbing its manners by laws, in order not to disturb its virtues. If the character is generally good, what difference do a few faults make?

One could constrain its women, make laws to correct their mores, and limit their luxury, but who knows whether one would not lose a certain taste that would be the source of the nation's wealth and a politeness that attracts foreigners to it?

The legislator is to follow the spirit of the nation when doing so is not contrary to the principles of the government, for we do nothing better than what we do freely and by following our natural genius.

If one gives a pedantic spirit to a nation naturally full of gaiety, the state will gain nothing, either at home or abroad. Let it do frivolous things seriously and serious things gaily.

CHAPTER 6

That one must not correct everything

May we be left as we are, said a gentleman of a nation closely resembling the one of which we have just given an idea. Nature repairs everything. It has given us a vivacity capable of offending and one apt to make us inconsiderate; this same vivacity is corrected by the politeness it brings us, by inspiring us with a taste for the world and above all for commerce with women.

May we be left as we are. Our discretions joined to our harmlessness make unsuitable such laws as would curb our sociable humor.

CHAPTER 7

On the Athenians and Lacedaemonians

The Athenians, continued this gentleman, were a people who had some relation with our own. They put gaiety in their public business; a joke from the rostrum pleased them as much as one in the theater. The vivacity they put into counsels was carried over into their execution. The character of the Lacedaemonians was grave, serious, dry, taciturn. One would have made no better use of an Athenian by boring him than of a Lacedaemonian by amusing him.

CHAPTER 8

Some effects of the sociable humor

The more communicative peoples are, the more easily they change their manners, because each man is more a spectacle for another; one sees the singularities of individuals better. The climate that makes a nation like to communicate also makes it like to change, and what makes a nation like to change also makes its taste take form.

The society of women spoils mores and forms taste; the desire to please more than others establishes ornamentation, and the desire to

please more than oneself establishes fashions. Fashions are an important subject; as one allows one's spirit to become frivolous, one constantly increases the branches of commerce.[8]

[8]See [Bernard Mandeville] *The Fable of the Bees* [1, 250–254; 1732 edn; remark T, 1, 225–228; 1924 edn].

CHAPTER 9

On the vanity and the arrogance of nations

Vanity is as good a spring for a government as arrogance is a dangerous one. To show this, one has only to imagine[b] to oneself, on the one hand, the innumerable goods resulting from vanity: luxury, industry, the arts, fashions, politeness, and taste, and, on the other hand, the infinite evils born of the arrogance of certain nations: laziness, poverty, the abandonment of everything, and the destruction of the nations that chance has let fall into their hands as well as their own nation. Laziness[9] is the effect of arrogance; work follows from vanity: the arrogance of a Spaniard will incline him not to work; the vanity of a Frenchman will incline him to try to work better than the others.

Every lazy nation is grave; for those who do not work regard themselves as sovereigns of those who work.

Examine all the nations and you will see that in most of them gravity, arrogance, and laziness go hand in hand.

The people of Achim[10] are proud and lazy: those who have no slaves rent one, if only to walk a hundred steps and carry two pints of rice; they would believe themselves dishonored if they carried it themselves.

In many places on earth people let their fingernails grow in order to indicate that they do not work.

[9]The peoples who follow the Khan of Malacamber, those of Carnataca and Coromandel, are proud and lazy; they consume little because they are miserably poor; whereas the Moguls and the peoples of Hindustan concern themselves with and enjoy the comforts of life, like Europeans. *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 1, p. 54 ["Avis sur le Commerce des Indes Orientales"; 1, LIV; 1725 edn].

[10]See [William] Dampier [*Voyages*], vol. 3 [vol. 2, pt. 1, chap. 7; 2, 56 and 62; 1906 edn].

[b]*se représenter.*

Women in the Indies[11] believe it is shameful for them to learn to read; this is the business, they say, of the slaves who sing hymns in the pagodas. In one caste, they do not spin; in another they make only baskets and mats, and should not even mill the rice; in others, they must not fetch water. Arrogance there has established its rules and sees that they are followed. It is unnecessary to say that moral qualities have different effects according to the other qualities united with them; thus arrogance joined to a vast ambition, to the greatness of ideas, etc. produced among the Romans the effects which are known to all.[c]

[11]*Lettres édifiantes et curieuses*, vol. 12, p. 80 [Lettre du P. de Bourzes, Madura, September 21, 1713; 12, 79–80; 1741 edn].

[c]See the discussion of honor, 3.5–8.

CHAPTER 10

On the character of the Spanish and that of the Chinese

The various characters of the nations are mixtures of virtues and vices, of good and bad qualities. The happy mixtures are those that result in great goods, and one often would not expect them; some result in great evils, and one would not expect them either.

The good faith of the Spaniards has been famous in all times. Justin[12] tells us of their faithfulness in guarding deposits; they have often suffered death to keep them secret. The faithfulness they had of old they still have today. All the nations that trade in Cadiz entrust their fortunes to the Spanish; they have never repented of it. But this admirable quality joined to their laziness forms a mixture whose effects are pernicious to them; before their very eyes the peoples of Europe carry on all the commerce of their monarchy.

The mixture that forms the Chinese character contrasts with the mixture that forms the Spanish character. The precariousness of their lives[13] makes them so prodigiously active and so excessively desirous of gain that no commercial nation can trust them.[14] This acknowledged

[12][Justin, *Epitoma historiarum Philippicarum*] bk. 43 [44.2.3].

[13]Because of the nature of the climate and the terrain.

[14]Father [Jean Baptiste] du Halde [*Description de l'Empire de la Chine*], vol. 2 ["Du commerce du Chinois"; 2, 205 H; 2, 170–172 P].

unfaithfulness has preserved Japanese commerce for the Chinese; no European trader has dared undertake it in their name, however easy this might have been for their maritime provinces in the north.

CHAPTER 11

Reflection

I have not said this to diminish in any way the infinite distance there is between vices and virtues: God forbid! I have only wanted to make it understood that not all political vices are moral vices and that not all moral vices are political vices, and those who make laws that run counter to the general spirit should not be ignorant of this.

CHAPTER 12

On manners and mores in the despotic state

It is a maxim of capital importance that the mores and manners of a despotic state must never be changed; nothing would be more promptly followed by a revolution. For, in these states, there are no laws, so to speak; there are only mores and manners, and if you overturn them, you overturn everything.

Laws are established, mores are inspired; the latter depend more on the general spirit, the former depend more on a particular institution; now, it is as dangerous, if not more so, to overturn the general spirit as to change a particular institution.

One is less communicative in countries where each man, whether a superior or an inferior, exercises and suffers an arbitrary power, than in those in which liberty reigns in all conditions. Therefore, one changes manners and mores less in them; manners that are more fixed are closer to laws: thus, a prince or a legislator must run counter to mores there less than in any other country in the world.

Women are ordinarily enclosed there and have no tone to give. In other countries where they live with men, their desire to please and one's desire to please them too prompt one to change manners

continually. The two sexes spoil each other; each loses its distinctive and essential quality; arbitrariness is put into what was absolute, and manners change every day.

CHAPTER 13

On manners among the Chinese

But in China manners are indestructible. Not only are the women completely separated from the men there, but one teaches manners as well as mores in the schools. A lettered person is known[15] by his fashion of bowing graciously. These things, once given as precepts by grave scholars, are fixed as principles of morality and no longer change.

[15] So says Father [Jean Baptiste] du Halde [*Description de l'Empire de la Chine*, "Extrait d'un livre Chinois intitulé l'Arte de rendre le peuple heureux en établissant des Ecoles publiques"; 2, 310–319 H; 2, 259–266 P; 2, 297–304 L.].

CHAPTER 14

What are the natural means of changing the mores and manners of a nation

We have said that the laws were the particular and precise institutions of the legislator and the mores and manners, the institutions of the nation in general. From this it follows that when one wants to change the mores and manners, one must not change them by the laws, as this would appear to be too tyrannical; it would be better to change them by other mores and other manners.

Thus, when a prince wants to make great changes in his nation, he must reform by laws what is established by laws and change by manners what is established by manners, and it is a very bad policy to change by laws what should be changed by manners.

The law that obliged the Muscovites to shorten their beards and their clothing and the violence of Peter I in trimming up to the knees the long robes of those who entered the towns were both tyrannical. The means for preventing crimes are penalties; the means for changing manners are examples.

The ease and promptness with which this nation has become orderly[d] has shown that this prince had too low an opinion of it and that these peoples were not beasts as he said. The violent means he employed were useless; he would have accomplished his purpose as well by gentleness.

He himself saw how easy it was to make changes. The women had been enclosed and in a way enslaved; he called them to court, he had them dress in the German way, and he sent them fabrics. They immediately appreciated a way of life that so flattered their taste, their vanity, and their passions, and they made the men appreciate it.

What made the change easier was that the mores of that time were foreign to the climate and had been carried there by the mixture of nations and by conquests. Peter found it easier than he had expected to give the mores and manners of Europe to a European nation. The empire of climate is the first of all empires. Therefore, he did not need laws to change the mores and manners of his nation; it would have been sufficient for him to inspire other mores and other manners.

In general, peoples are very attached to their customs; taking their customs from them violently makes them unhappy: therefore, one must not change their customs, but engage the peoples to change them themselves.

Every penalty that does not derive from necessity is tyrannical. The law is not a pure act of power; things indifferent by their nature are not within its scope.[e]

[d] . . . *cette nation s'est policée.*

[e] *ressort.* See note [a], bk. 12.

CHAPTER 15

Influence of domestic government on political government

This change in the mores of women will no doubt affect the government of Muscovy very much. Everything is closely linked together: the despotism of the prince is naturally united with the servitude of women; the liberty of women, with the spirit of monarchy.

CHAPTER 16

How some legislators have confused the principles that govern men

Mores and manners are usages that laws have not established, or that they have not been able, or have not wanted, to establish.

The difference between laws and mores is that, while laws regulate the actions of the citizen, mores regulate the actions of the man. The difference between mores and manners is that the first are more concerned with internal, and the latter external, conduct.

Sometimes in a state these things are confused with one another.[16] Lycurgus made a single code for the laws, the mores and the manners, and the legislators of China did the same.

One must not be astonished if the legislators of Lacedaemonia and those of China confused laws, mores, and manners; this is because mores represent laws, and manners represent mores.

The principal object of the Chinese legislators was to have their people live in tranquility. They wanted men to have much respect for each other; they wanted each one to feel at every instant that he owed much to the others; they wanted every citizen to depend, in some respect, on another citizen. Therefore, they extended the rules of civility to a great many people.

Thus, among the Chinese peoples, one sees villagers[17] observe between themselves ceremonies like those of people of a higher condition; this is a very proper means of inspiring gentleness, of maintaining peace and good order among the people, and of removing all the vices that come from a harsh spirit. Indeed, is not freeing oneself from the rules of civility the way one seeks to put oneself more at ease with one's faults?

Civility is preferable, in this regard, to politeness. Politeness flatters the vices of others, and civility keeps us from displaying our own; it is a barrier that men put between themselves in order to keep from being corrupted.

Lycurgus, whose institutions were harsh, did not have civility as an

[16] Moses made a single code of laws and religion. The first Romans mixed together the old customs and the laws.

[17] See Father [Jean Baptiste] du Halde [*Description de l'Empire de la Chine*, "De la morale du Chinois"; 3, 157 H; 3, 129–130 P].

object when he formed manners; he had in view the bellicose spirit he wanted to give his people. Always correcting or being corrected, always instructing and being instructed, as simple as they were rigid, these people practiced virtues for each other, rather than showing them regard.

CHAPTER 17

A property peculiar to the government of China

The legislators of China did more:[18] they confused religion, laws, mores, and manners; all was morality, all was virtue. The precepts concerning these four points were what one called rites. It was in the exact observation of these rites that the Chinese government triumphed. One passed all of one's youth learning them, all of one's life practicing them. The scholars taught them; the magistrates preached them. And, as these rites encompassed all the minor activities of life, China was well governed when a way was found to make them be observed exactly.

Two things made it possible to engrave these rites easily in the hearts and spirits of the Chinese: the one, their extremely complicated manner of writing which kept their spirits solely occupied with these rites for a great part of their lives[19] because one had to learn to read from the books and for the sake of the books that contained them, the other, that as the precepts of rites are in no way spiritual but are simply rules of common practice, it is easier to convince and to stamp spirits with them than with something intellectual.

Those princes who, instead of governing by the rites, governed by the force of punishments, wanted to have punishments do what is not in their power, which is to give mores. Punishments will cast out of society a citizen who, having lost his mores, violates the laws, but if everyone loses his mores, will punishments reestablish them? Punishments will indeed check many consequences of the general evil, but they will not correct this evil. Thus, when one abandoned the principles of Chinese government, when morality was lost there, the state fell into anarchy and one saw revolutions.

[18] See the classic books of which Father du Halde has given us such a fine selection. [*Description de l'Empire de la Chine*, 2, 340–458 H; 2, 284–383 P.]

[19] This is what established emulation, flight from laziness, and high esteem for knowledge.

CHAPTER 18

Consequence of the preceding chapter

The result of this is that conquest does not make China lose its laws. As manners, mores, laws, and religion are but the same thing there, one cannot change all of that at once. And, as either the vanquisher or the vanquished must change, in China it has always had to be the vanquisher; for, as the mores of the vanquishers are not their manners, nor their manners, their laws, nor their laws, their religion, it has been easier for the vanquishers to bend slowly to the vanquished people than for the vanquished people to bend to the vanquishers.

A very sad thing also follows from this; it is almost impossible for Christianity ever to be established in China.[20] The vows of virginity, the assembly of women in churches, their necessary communication with the ministers of religion, their participation in the sacraments, the auricular confession, extreme unction, marriage to a single woman, all this overthrows the mores and manners of the country and strikes against the religion and the laws at the same time.

The Christian religion, by the establishment of charity, by a public worship, and by participation in the same sacraments, seems to require that everything be united; the rites of the Chinese seem to order that everything be separate.

And, as one has seen that such separation[21] is generally linked to the spirit of despotism, one will find in this a reason why monarchical government, indeed any moderate government, makes a better alliance[22] with the Christian religion.

[20] See the reasons given by the Chinese magistrates in the decrees they made to proscribe the Christian religion. *Lettres édifiantes et curieuses*, vol. 17 [Lettre du P. de Mailla, Peking, October 16, 1724; 17, 167–170; 1726 edn].

[21] See bk. 4, chap. 3, and bk. 19, chap. 12 [above].

[22] See below, bk. 24, chap. 3.

CHAPTER 19

How this union of religion, laws, mores, and manners was made among the Chinese

The Chinese legislators had the tranquility of the empire as the principal object of government. Subordination seemed to them the most appropriate means of maintaining it. As part of this idea they believed they should inspire respect for the fathers, and they brought together all their forces to do so. They established an infinity of rites and ceremonies in order to honor fathers during their life and after death. It was impossible to give so much honor to the dead fathers without being drawn to honor the living ones. Ceremonies for dead fathers were more related to religion, and those for living fathers more related to the laws, mores, and manners; but these were only parts of a single code, and this code was very far-reaching.

Respect for fathers necessarily involved everything that represented fathers, old men, teachers, magistrates, the emperor. Respect for fathers implies that a love be returned to children and, as a consequence, implies the return of love from the elders to the young people, from the magistrates to those who were subject to them, from the emperor to his subjects. All this formed the rites, and these rites formed the general spirit of the nation.

One can feel the relation that China's fundamental constitution can have with things that are seemingly indifferent to it. This empire is formed on the idea of family government. If you diminish paternal authority or if you even withdraw the ceremonies that express one's respect for it, you weaken the respect for magistrates, who are regarded as fathers; magistrates will no longer have the same care for the peoples whom they should consider as their children; the relation of love between the prince and his subjects will also be gradually lost. Omit one of these practices, and you shake the state. It is quite indifferent in itself whether a daughter-in-law gets up every morning to perform such and such duties for a mother-in-law; but if one notes that these external practices constantly call one back to a feeling, which it is necessary to impress on all hearts, and which comes from all hearts to form the spirit that governs the empire, one will see that it is necessary for a certain particular action to be performed.

CHAPTER 20

Explanation of a paradox about the Chinese

It is strange that the Chinese, whose life is entirely directed by rites, are nevertheless the most unscrupulous people on earth. This appears chiefly in commerce, which has never been able to inspire in them the good faith natural to it. The buyer should carry his own scale[23] as each merchant has three of them, a heavy one for buying, a light one for selling, and an accurate one for those who are on their guard. I believe I can explain this contradiction.

Chinese legislators have had two objects: they have wanted the people to be both submissive and tranquil, and hardworking and industrious. Because of the nature of the climate and the terrain, their life is precarious; one secures one's life there only by dint of industry and work.

When everyone obeys and everyone works, the state is in a fortunate situation. Necessity and perhaps the nature of the climate have given all the Chinese an unthinkable avidity for gain, and the laws have not dreamed of checking it. Everything has been prohibited if it is a question of acquisition by violence; everything has been permitted if it is a matter of obtaining by artifice or by industry. Therefore, let us not compare the morality of China with that of Europe. Everyone in China has had to be attentive to what was useful to him; if the rascal has watched over his interests, he who is duped has had to think of his own. In Lacedaemonia, stealing was permitted; in China, deceit is permitted.

[23] *Recueil de voyages au nord*, vol. 8, p. 363, Lange, *Journal* for 1721 and 1722 [8, 363; 1727 edn].

CHAPTER 21

How laws should be relative to the mores and the manners

Only singular institutions thus confuse laws, mores, and manners, things that are naturally separate; but, even though they are separate, they are still closely related.

Solon was asked if the laws he had given to the Athenians were the best; "I have given them the best laws they could endure," he replied: this is a fine speech that should be heard by all legislators. When the divine wisdom said to the Jewish people, "I have given you precepts that are not good," this meant that the precepts were only relatively good, which sponges away all the difficulties one can propose about the Mosaic laws.

CHAPTER 22

Continuation of the same subject

When a people have good mores, laws become simple. Plato says[24] that Rhadamanthus, who governed an extremely religious people, dispatched all trials speedily by having only an oath sworn on each count. But, Plato also says,[25] when a people are not religious, one can use the oath only on the occasions when those who swear it, such as the judge and witnesses, are without interest.

[24] [Plato] *Laws*, bk. 12 [948b–d]. [25] Ibid. [Plato, *Laws*, 948c–d].

CHAPTER 23

How the laws follow mores

At the time when the mores of the Romans were pure, there was no specific law against embezzlement. When this crime began to appear, it was deemed so infamous that to be condemned to restore what one had taken[26] was regarded as a great penalty: witness the judgment against L. Scipio.[27]

[26] *In simplum*: "the simple value." [27] Livy, bk. 38 [38.60].

CHAPTER 24

Continuation of the same subject

The laws that give guardianship to the mother are more attentive to the preservation of the person[f] of the ward; those that give it to the closest heir are more attentive to the preservation of the goods. Among peoples whose mores are corrupt, it is preferable to give the guardianship to the mother. Among those whose laws should trust the mores of the citizens, one gives the guardianship to the heir of the goods, or to the mother, and sometimes to both of them.

If one reflects on the Roman laws, one will find that their spirit conforms to what I say. At the time when the Law of the Twelve Tables was made, mores in Rome were admirable. One gave the guardianship to the closest relative of the ward, thinking that he who could have the advantage of the inheritance should have the charge of the guardianship. It was not believed that the life of a ward was in danger although it was put in the hands of one to whom the ward's death could be useful. But, when mores changed in Rome, legislators were also seen to change their way of thinking. "If, in appointing guardians for the ward," says Gaius[28] and Justinian,[29] "the testator fears that the person appointed will plot against the ward, he can leave the vulgar substitution[30] open and put the wardship in a part of the will that can be disclosed only after a certain time." These fears and precautions were unknown to the first Romans.

[28] [Gaius] *Institutes*, bk. 2, tit. 6, para. 2; Ozel compilation, Leyden, 1658 [2.6.2].
[29] [*Corpus Juris Civilis*] *Institutes*, bk. 2, para. 3 [2.3]; *de pupillari substitutione*.
[30] The vulgar substitution is: "if so and so does not take the inheritance, I appoint instead of him . . ." etc.; the substitution of a guardian [pupillary] is: "If a certain one dies before [the ward's] puberty, I appoint instead of him . . ." etc.

[f] "Person" is distinguished here from estate, title, etc.

CHAPTER 25

Continuation of the same subject

Roman law gave people the liberty to give gifts to one another before marriage; after marriage it no longer permitted them. This was founded on the mores of the Romans, who were drawn to marriage only by frugality, simplicity, and modesty, but who might be seduced by domestic cares, by kindness, and by the happiness of a complete life.

The law of the Visigoths[31] wanted the husband to be kept from giving more than a tenth of his goods to the one he was to marry and to be kept from giving her anything during the first year of his marriage. This comes, in addition, from the mores of the country. The legislators wanted to check that Spanish boastfulness which is drawn only to excessive liberalities dramatically displayed.

The Romans, by their laws, checked some of the defects of the most durable empire in the world, that of virtue; the Spanish, by their laws, wanted to halt the worst effects of the most fragile tyranny in the world, that of beauty.

[31] [*Lex Wisigothorum*] bk. 3, tit. 1, para. 5 [3.1.5].

CHAPTER 26

Continuation of the same subject

The law of Theodosius and Valentinian[32] took the causes for repudiation from the earlier mores[33] and manners of the Romans. It put among those causes the actions of a husband[34] who chastised his wife in the manner unworthy of a freeborn person. This cause was omitted from later laws;[35] this is because the mores had changed in this regard; the usages of the East had taken the place of those of Europe. The first eunuch of the empress, wife of Justinian II, threatened her, history

[32] Law 8 of the *Code* [*Corpus Juris Civilis*, *Code* 5.17.8]; *de repudiis et judicio de moribus sublato.*
[33] And from the law of the Twelve Tables. See Cicero, *Philippicae* [2.28.69].
[34] "If he be proven to have used whips, a thing unsuitable for any freeborn person" [L.] [*Corpus Juris Civilis*, *Code* 5.17.8.2; *de repudiis et judicio de moribus sublato.*]
[35] In [*Corpus Juris Civilis*] *Novellae* 117, chap. 14 [117.14].

says, with the chastisement used to punish children in schools. Only established mores or mores seeking to establish themselves could make such a thing imaginable.

We have seen how laws follow mores; let us now see how mores follow laws.

CHAPTER 27

How laws can contribute to forming the mores, manners, and character of a nation

The customs of a slave people are a part of their servitude; those of a free people are a part of their liberty.

I have spoken in Book 11[36] of a free people, and I have given the principles of their constitution; let us see the effects that had to follow, the character that was formed from it, and the manners that result from it.

I do not say that the climate has not in large part produced the laws, the mores, and the manners of this nation, but I say that the mores and the manners of this nation should be closely related to its laws.

Since in this state there would be two visible powers, legislative power and executive power, and as each citizen would have his own will and would value his independence according to his taste, most people would have more affection for one of these powers than for the other, as the multitude is ordinarily not fair or sensible enough to have equal affection for both of them.

And, as the executive power, which has all the posts at its disposal, could furnish great expectations but not fears, all those who would obtain something from it would be inclined to move to that side, and it could be attacked by all those who could expect nothing from it.

As all the passions are free there, hatred, envy, jealousy, and the ardor for enriching and distinguishing oneself would appear to their full extent, and if this were otherwise, the state would be like a man who, laid low by disease, has no passions because he has no strength.

The hatred between the two parties would endure because it would always be powerless.

[36] [Bk. 11] chap. 6 [above].

As these parties are made up of free men, if one party gained too much, the effect of liberty would be to lower it while the citizens would come and raise the other party like hands rescuing the body.

As each individual, always independent, would largely follow his own caprices and his fantasies, he would often change parties; he would abandon one and leave all his friends in order to bind himself to another in which he would find all his enemies; and often, in this nation, he could forget both the laws of friendship and those of hatred.

The monarch would be in the same situation as the individuals; and, against the ordinary maxims of prudence, he would often be obliged to put his trust in those who had most run counter to him and to disgrace those who had best served him, doing by necessity what other princes do by choice.

One is afraid of seeing the escape of a good that one feels, that one scarcely knows, and that can be hidden from us; and fear always enlarges objects. The people would be uneasy about their situation and would believe themselves in danger even at the safest moments.

As those who would most sharply oppose executive power would be unable to admit the interested motives of their opposition, they would increase even more the terrors of the people, who would never know precisely whether or not they were in danger. But even this would help them avoid the real perils to which they might sometimes be exposed.

But, as the legislative body has the trust of the people and is more enlightened than they, it could make them revise the bad impressions they had been given and calm these emotions.

This is the great advantage such a government would have over the ancient democracies, in which the people had an immediate power; for, when the orators agitated them, these agitations always had their effect.

Thus, if the terrors impressed on a people had no certain object, they would produce only empty clamors and insults and would even have the good effect of stretching all the springs of the government and making all the citizens attentive. But, if those terrors arose on the occasion of the overthrow of fundamental laws, they would be insidious, lamentable, and heinous, and would produce catastrophes.

One would soon see an awful calm, during which everything would unite together against the power that violated the laws.

If, in the case where uneasiness has no certain object, some foreign power threatened the state and put its fortune or glory in danger, at that

time everything would unite in favor of executive power, as small interests would cede to greater ones.

For, if disputes were formed on the occasion of the violation of the fundamental laws and a foreign power appeared, there would be a revolution that would not change the form of the government or its constitution, as revolutions formed by liberty are but a confirmation of liberty.

A free nation can have a liberator; a subjugated nation can have only another oppressor.

For any man who has enough strength to drive out the one who is already the absolute master in a state has enough strength to become one himself.

Because, in order to enjoy liberty, each must be able to say what he thinks and because, in order to preserve it, each must still be able to say what he thinks, a citizen in this state would say and write everything that the laws had not expressly prohibited him from saying or writing.

This nation, always heated, could more easily be led by its passions than by reason, which never produces great effects on the spirits of men, and it would be easy for those who governed it to make it undertake enterprises against its true interests.

This nation would love its liberty prodigiously because this liberty would be true; and it could happen that, in order to defend that liberty, the nation might sacrifice its goods, its ease, and its interests, and might burden itself with harsher imposts than even the most absolute prince would dare make his subjects bear.

But, as this nation would know with certainty that it was necessary to submit to them, as it would pay them in the well-founded expectation of not having to pay more, the burdens would be heavier than the feeling of these burdens, whereas there are states in which the feeling is infinitely worse than the ill.

This nation would have secure credit because it would borrow from itself and would pay to itself. It could happen that it would undertake something beyond the forces natural to it and would assert against its enemies an immense fictional wealth that the trust and the nature of its government would make real.

In order to preserve its liberty, it would borrow from its subjects, and its subjects, who would see that its credit would be lost if it were conquered, would have a further motive to make efforts to defend its liberty.

If this nation inhabited an island, it would not be a conquering nation because overseas conquests would weaken it. It would be even less a conqueror if the terrain of this island were good, because it would not need war to enrich itself. And, as no citizen would depend on another citizen, each would make more of his liberty than of the glory of a few citizens, or of a single one.

There, one would regard military men as people whose occupation can be useful and often dangerous, as people whose services are arduous for the nation itself, and there civil status would be more highly esteemed.

This nation, made comfortable by peace and liberty, freed from destructive prejudices, would be inclined to become commercial. If it had some one of the primary[g] commodities used to make things that owe their high price to the hand of the worker, it could set up establishments apt to procure for itself the full enjoyment of this gift of heaven.

If this nation were situated toward the north and had many superfluous products, as it would also lack a great many commodities denied by its climate, it would have a necessary, but large, commerce with the peoples of the South; and, choosing which states it would favor with an advantageous commerce, it would make reciprocally useful treaties with the nation it had chosen.

In a state where, on the one hand, opulence was extreme, and, on the other, imposts were excessive, with a limited fortune one could scarcely live without ingenuity. On the pretext of travel or health, many people would go into exile and seek abundance even in the countries of servitude.

A commercial nation has a prodigious number of small, particular interests; therefore, it can offend and be offended in an infinity of ways. This nation would become sovereignly jealous and would find more distress in the prosperity of others than enjoyment in its own.

And its laws, otherwise gentle and easy, might be so rigid in regard to the commerce and navigation carried on with it that it would seem to negotiate only with enemies.

If this nation sent colonies abroad, it would do so to extend its commerce more than its domination.

[g] *primitive.* See note [a], bk. 1.

As one likes to establish elsewhere what is established at home, it would give the form of its own government to the people of its colonies; and as this government would carry prosperity with it, one would see the formation of great peoples, even in the forests to which it had sent inhabitants.

It could be that it had formerly subjugated a neighboring nation which, by its situation, the goodness of its ports, and the nature of its wealth, made the first jealous; thus, although it had given that nation its own laws, the great dependence in which the nation was held was such that the citizens there would be free and the state itself would be enslaved.

The conquered state would have a very good civil government, but it would be crushed by the right of nations; the laws imposed upon it from one nation to another would be such that its prosperity would be only precarious and only a deposit for a master.

The dominant nation, inhabiting a big island and being in possession of a great commerce, would have all sorts of facilities for forces upon the seas; and as the preservation of its liberty would require it to have neither strongholds, nor fortresses, nor land armies, it would need an army on the sea to protect itself from invasions; and its navy would be superior to that of all other powers, which, needing to employ their finances for a land war, would no longer have enough for a sea war.

A naval empire has always given the peoples who have possessed it a natural pride, because, feeling themselves able to insult others everywhere, they believe that their power is as boundless as the ocean.

This nation could have a great influence on the business of its neighbors. For, as it would not employ its power making conquests, one would seek its friendship more, and one would fear its hatred more than the changeableness of its government and its internal agitation would seem to permit.

Thus, it would be the fate of the executive power to be almost always uneasy at home and respected abroad.

If it happened that this nation became on some occasions the center of negotiations in Europe, it would bring to them a little more integrity and good faith than the other nations because, as its ministers would often be obliged to justify their conduct to a popular council, their negotiations could not be secret and they would be forced in this respect to be people of somewhat greater honesty.

In addition, as they would in some way be answerable for the events to which an indirect course could give rise, the surest thing for them would be to take the straightest road.

If at certain times the nobles had an immoderate power in the nation and the monarch had found the way to debase them while raising up the people, the point of extreme servitude would be between the moment of the debasement of the important men and the one when the people began to feel their power.

It could be that this nation, having formerly been subject to an arbitrary power, would, on many occasions, have preserved that style so that one would often see the form of an absolute government over the foundation of a free government.

With regard to religion, as in this state each citizen would have his own will and would consequently be led by his own enlightenment or his fantasies, what would happen is either that everyone would be very indifferent to all sorts of religion of whatever kind, in which case everyone would tend to embrace the dominant religion, or that one would be zealous for religion in general, in which case sects would multiply.

It would not be impossible for there to be in this nation people who had no religion and who would not for all that want to be obliged to change the one they would have had if they had had one, for they would immediately feel that life and goods are no more theirs than their way of thinking and that he who can rob them of the one can more easily take away the other.

If, among the different religions, there were one whose establishment had been attempted by means of slavery, it would be odious there because, as we judge things by what we associate with them or see as dependent upon them, such a religion would never come to mind together with the idea of liberty.

The laws against those who would profess this religion would not be bloodthirsty, for liberty does not imagine these sorts of penalties, but they would be so repressive that they would do all the evil that can be done in cold blood.

It could happen in a thousand ways that the clergy would have so little credit that the other citizens would have more. Thus, instead of being separate, they would prefer to bear the same burden as the lay people and, in that regard, make up only one body, but still seeking to be respected by the people, they would distinguish themselves

by a more retired life, a more reserved conduct, and purer motives.

This clergy, unable to protect religion or to be protected by it, lacking force to constrain, would seek to persuade; very fine works would come from their pens, written to prove the revelation and the providence of the great being.

It could happen that one would frustrate their assemblies and would not want to permit the clergy to correct even their abuses and that, in a frenzy of liberty, one would rather leave their reform imperfect than suffer them to be the reformers.

The high positions that are a part of the fundamental constitution would be more fixed than elsewhere, but, on the other hand, the important men in this country of liberty would be closer to the people; therefore, ranks would be more separate and persons more confused.

As those who govern would have a power that revives, so to speak, and is remade daily, they would have more regard for those who are useful to them than for those who divert them; thus, one would see there few courtiers, flatterers, and fawners, and finally, all those kinds of people who take advantage of the very emptiness of spirit of the important men.

Men would scarcely be judged there by frivolous talents or attributes, but by real qualities, and of these there are only two, wealth and personal merit.

There would be a solid luxury, founded not on the refinement of vanity, but on that of real needs, and one would scarcely seek in things any but the pleasures nature had put there.

One would enjoy a great superfluity there, but nevertheless frivolous things would be proscribed; thus, because many men would have more goods than occasions for expenditure, they would employ them eccentrically, and in this nation there would be more wit than taste.

As one would always be busy with one's own interests, one would not have the politeness that is founded on idleness, and one would really have no time for it.

The epoch of Roman politeness is the same as that of the establishment of arbitrary power. Absolute government produces idleness, and idleness gives birth to politeness.

The more people there are in a nation who need to deal with each other and not cause displeasure, the more politeness there is. But we should be distinguished from barbarous peoples more by the politeness of mores than by that of manners.

In a nation where each man in his own way would take part in the administration of the state, the women should scarcely live among men. Therefore, women would be modest, that is, timid; this timidity would be their virtue, whereas the men, lacking gallantry, would throw themselves into a debauchery that would leave them their liberty as well as their leisure.

As the laws there would not be made for one individual more than another, each would regard himself as the monarch; the men in this nation would be confederates more than fellow citizens.

If the climate had given a restless spirit and a broad view to many people in a country where the constitution gave everyone a part in the government along with political interests, one would talk much about politics; one would see people who spent their lives calculating about events, which, given the nature of things and the caprice of fortune (that is of men),[h] are scarcely subject to calculation.

In a free nation it often does not matter whether individuals reason well or badly; it suffices that they reason; from that comes the liberty that protects them from the effects of these same reasonings.

Similarly, in a despotic government, it is equally pernicious whether one reasons well or badly; it suffices that one reason to run counter to the principle of the government.

The many people who would not worry about pleasing anyone would abandon themselves to their own humor. The majority who are witty would be tormented by that very wit;[i] having disdain or disgust for everything, they would be unhappy while having so many grounds not to be so.

As no citizen would fear another citizen, this nation would be proud, for the pride of kings is founded only on their independence.

Free nations are haughty; others can more easily be vain.

But these men who are so proud, living mostly alone with themselves, would often find themselves among unfamiliar people; they would be timid, and one would see in them, most of the time, a strange mixture of bashfulness and pride.

The character of the nation would appear above all in the works of the mind in which one would see a withdrawn people, each of whom thought alone.

[h] Translators' parentheses.

[i] Here *esprit* is translated "wit", although the reader needs to keep in mind Montesquieu's more general notion of "spirit," that is, of directed activity.

Society teaches us to feel the ridiculous; retirement makes us more apt to feel vices. Their satirical writings would be scathing, and one would see many Juvenals among them before finding a Horace.

In extremely absolute monarchies, historians betray the truth because they do not have the liberty to tell it; in extremely free states, they betray truth because of their very liberty for, as it always produces divisions, each one becomes as much the slave of the prejudices of his faction as he would be of a despot.

Their poets would more often have an original bluntness of invention than a certain delicacy of taste; one would find there something closer to Michelangelo's strength than to Raphael's grace.

The Spirit of Laws

Part 4

BOOK 20

On the laws in their relation to commerce, considered in its nature and its distinctions

That which great Atlas taught.
VIRGIL, *Aeneid* [1.741]

Invocation to the Muses[a]

Virgins of the Pierian Mount,[1] do you hear the name I give you? Inspire me. I have run a long course. I am crushed by pain, fatigue, and worry. Give my spirit the calm and the gentleness that now flee from me. You are never as divine as when you lead to wisdom and truth through pleasure.

But if you do not want to soften the harshness of my labors, conceal the labor itself. Make it so that I meditate though I appear to feel. Make it so that one is instructed though I do not teach and that, when I announce useful things, one believes that I knew nothing and that you told me everything.

When the waters of your spring come forth from your beloved rock, they rise into the air not to fall back again but to flow over the meadow; they are your delight because they are the delight of the shepherds.

Charming Muses, if you cast me but a single glance, everyone will read my works, and what was not intended as an amusement will be a pleasure.

Divine Muses, I sense that you inspire me, not just what is sung in Tempe with the pipes or what is repeated at Delos on the lyre. You also want me to make reason speak. It is the noblest, the most perfect, the most exquisite of our senses.

[1] "Speak on, O ye Pierian maidens, if it be proper for me to call you maidens" [L.]. Juvenal, *Satires* (4.35–36).]

[a] We have placed the "Invocation to the Muses" at the beginning of Book 20, as Montesquieu originally intended.

CHAPTER 1

On commerce

The following material would require more extensive treatment, but the nature of this work does not permit it. I should like to glide on a tranquil river; I am dragged along by a torrent.

Commerce cures destructive prejudices, and it is an almost general rule that everywhere there are gentle mores,[b] there is commerce and that everywhere there is commerce, there are gentle mores.

Therefore, one should not be surprised if our mores are less fierce than they were formerly. Commerce has spread knowledge of the mores of all nations everywhere; they have been compared to each other, and good things have resulted from this.

One can say that the laws of commerce perfect mores for the same reason that these same laws ruin mores. Commerce corrupts pure mores,[2] and this was the subject of Plato's complaints; it polishes and softens barbarous mores, as we see every day.

[2] Caesar says of the Gauls that the proximity and commerce of Marseilles had spoiled them so that they, who had formerly always vanquished the Germans, had become inferior to them. [Gaius Julius Caesar] *De bello Gallico*, bk. 6 [6.24].

[b] Although *doux* can be translated as "soft," "gentle," with its less pejorative and more descriptive tone, is most appropriate to Montesquieu's meaning.

CHAPTER 2

On the spirit of commerce

The natural effect of commerce is to lead to peace. Two nations that trade with each other become reciprocally dependent; if one has an interest in buying, the other has an interest in selling, and all unions are founded on mutual needs.

But, if the spirit of commerce unites nations, it does not unite individuals in the same way. We see that in countries[3] where one is affected only by the spirit of commerce, there is traffic in all human

[3] Holland.

activities and all moral virtues; the smallest things, those required by humanity, are done or given for money.

The spirit of commerce produces in men a certain feeling for exact justice, opposed on the one hand to banditry and on the other to those moral virtues that make it so that one does not always discuss one's own interests alone and that one can neglect them for those of others.

By contrast, total absence of commerce produces the banditry that Aristotle puts among the ways of acquiring. Its spirit is not contrary to certain moral virtues; for example, hospitality, so rare among commercial countries, is notable among bandit peoples.

It is a sacrilege among the Germans, says Tacitus, to close one's house to any man whether known or unknown. Anyone who has offered hospitality to a stranger will point him to another house where there is similar hospitality,[4] and he will be received there with the same humanity. But, after the Germans had founded kingdoms, hospitality became burdensome to them. This is shown by two laws in the code of the Burgundians:[5] the one imposes a penalty on any barbarian who would point a stranger to the house of a Roman and the other rules that anyone who receives a stranger will be compensated by the inhabitants, each according to his share.

[4] "The one who was just now the host directs the guest to another host" [L.]. [Tacitus] *Germania* [21]. See also [Gaius Julius] Caesar, *De bello Gallico*, bk. 6 [6.23.9].
[5] [*Leges Burgundionum*] tit. 38 [38.7].

CHAPTER 3

On the poverty of peoples

There are two sorts of poor peoples: some are made so by the harshness of the government, and these people are capable of almost no virtue because their poverty is a part of their servitude; the others are poor only because they have disdained or because they did not know the comforts of life, and these last can do great things because this poverty is a part of their liberty.

CHAPTER 4

On commerce in the various governments

Commerce is related to the constitution. In government by one alone, it is ordinarily founded on luxury, and though it is also founded on real needs, its principal object is to procure for the nation engaging in it all that serves its arrogance, its delights, and its fancies. In government by many, it is more often founded on economy. Traders, eyeing all the nations of the earth, take to one what they bring from another. This is how the republics of Tyre, Carthage, Marseilles, Florence, Venice, and Holland engaged in commerce.

This kind of traffic concerns the government of many by its nature and monarchical government on occasion. For, as it is founded only on the practice of gaining little and even of gaining less than any other nation and of being compensated only by gaining continually, it is scarcely possible for it to be done by a people among whom luxury is established who spend much and who see only great objects.

In keeping with these ideas, Cicero said so well:[6] "I do not like a people to be both the rulers and the clerks of the universe." Indeed, one would have to assume that each individual in this state and even the whole state always had a head full of both great projects and small ones, which is contradictory.

Yet the greatest enterprises are also undertaken in those states which subsist by economic commerce, and they show a daring not to be found in monarchies: here is the reason for it.

One commerce leads to another, the small to the middling, the middling to the great, and he who earlier desired to gain little arrives at a position where he has no less of a desire to gain a great deal.

Moreover, the great enterprises of the traders are always necessarily mixed with public business. But, public business is for the most part as suspect to the merchants in monarchies as it appears safe to them in republican states. Therefore, great commercial enterprises are not for monarchies, but for the government by many.

In short, one's belief that one's prosperity is more certain in these states makes one undertake everything, and because one believes that what one has acquired is secure, one dares to expose it in order to

[6]"I do not wish the same people to be both the ruler and customs officer for the world" [L.] [Cicero, *De republica* 4.7].

acquire more; only the means for acquisition are at risk; now, men expect much of their fortune.

I do not mean that any monarchies are totally excluded from economic commerce, but they are less inclined to it by its nature; I do not mean that the republics we know are entirely without the commerce of luxury, but it is less related to their constitution.

As for the despotic state, it is useless to talk about it. General rule: in a nation that is in servitude, one works more to preserve than to acquire; in a free nation, one works more to acquire than to preserve.

CHAPTER 5

On peoples who have engaged in economic commerce

Marseilles, a necessary retreat in the midst of a stormy sea, Marseilles, where all the winds, the shoals, and the coastline order ships to put in, was frequented by sea-faring people. The barrenness[7] of its territory made its citizens decide on economic commerce. They had to be hardworking in order to replace that which nature refused them; just, in order to live among the barbarian nations that were to make their prosperity; moderate, in order for their government always to be tranquil; finally, of frugal mores, in order to live always by a commerce that they would the more surely preserve the less it was advantageous to them.

It has been seen everywhere that violence and harassment have brought forth economic commerce among men who are constrained to hide in marshes, on islands, on the shoals, and even among dangerous reefs. Thus were Tyre, Venice, and the Dutch towns founded; fugitives found security there. They had to live; they drew their livelihood from the whole universe.

[7]Justin [*Epitoma historiarum Philippicarum*], bk. 43, chap. 3 [43.3.5].

CHAPTER 6

Some effects of a great navigation

It sometimes happens that a nation that engages in economic commerce, needing the commodities of one country to serve as a basis for procuring the commodities of another, is satisfied to gain very little and sometimes nothing on the former, in the expectation or the certainty of gaining much on the latter. Thus, when Holland almost alone traded from the south of Europe to the north, the French wines, which it carried to the north, in a way served it only as a base for its commerce in the north.

It is known that in Holland certain kinds of commodities imported from a distance often sell for no more than they cost where they come from. Here is the reason given: a captain who needs ballast in his ship will take on marble; he needs wood for packing his cargo, he will buy it; and provided he loses nothing on it, he will believe he has done well. Thus, Holland also has its quarries and its forests.

Not only can a commerce that produces nothing be useful, but so can even a disadvantageous commerce. I have heard that in Holland whale-hunting generally speaking almost never returns what it costs; but those who have been employed in building the ship, those who have provided the rigging, the gear, and the provisions, are also those who take the principal interest in the hunt. Even if they lose on the hunt, they have come out ahead on the equipage. This commerce is a kind of lottery, and each one is seduced by the hope of a lucky number. Everyone loves to play, and the most sober[c] people willingly enter the play when it does not have the appearance of gambling, with all its irregularities, its violence, its dissipation, the loss of time, and even of life.

[c] *les plus sages*. (See note [b], bk. 1 and note [b], bk. 5.)

CHAPTER 7

The spirit of England concerning commerce

Almost none of England's tariffs with other nations are regular; tariffs change, so to speak, with each parliament, as it lifts or imposes particular duties. England has also wanted to preserve its

independence in this matter. Sovereignly jealous of the commerce that is done there, it binds itself with few treaties and depends only on its laws.

Other nations have made commercial interests give way to political interests: England has always made its political interests give way to the interests of its commerce.

This is the people in the world who have best known how to take advantage of each of these three great things at the same time: religion, commerce, and liberty.

CHAPTER 8

How economic commerce has sometimes been hampered

In certain monarchies, laws have been made which serve to lower the states that engage in economic commerce. They have been forbidden to supply commodities other than those produced in their country; they have been permitted to trade only with ships built in their own country.

The state imposing these laws must be able to engage in the commerce easily itself; otherwise, it would do itself at least an equal wrong. It is better to deal with a nation that requires little and that the needs of commerce render somewhat dependent; with a nation that knows where to place all superfluous commodities due to the breadth of its views or its business; that is rich and can itself take many products; that will pay promptly for them; that has, so to speak, necessities for being faithful; that is peaceful on principle; that seeks to gain, and not to conquer: it is better, I say, to deal with this nation than with others that are ever rivals and would not offer all these advantages.

CHAPTER 9

On exclusion in commerce

The true maxim is to exclude no nation from one's commerce without great reasons. The Japanese trade with only two nations, the Chinese and the Dutch. The Chinese[8] earn a thousand percent on sugar and

[8] Father [Jean Baptiste] du Halde [*Description de l'Empire de la Chine*], vol. 2, pp. 170 ["Du commerce du Chinois," 2, 205–206 H; 2, 170 P; 2, 297 L.].

sometimes as much on return commodities. The Dutch make about the same profit. Any nation that is guided by the maxims of the Japanese will necessarily be deceived. It is competition that puts a just price on goods and establishes the true relations between them.

Still less should a state subject itself to selling its commodity to but a single nation on the pretext that it will take all of it at a certain price. For their grain, the Poles made this bargain with the town of Danzig; many kings of the Indies have similar contracts with the Dutch for spices.[9] These agreements are appropriate only for a poor nation, which willingly abandons the expectation of becoming rich, provided it has secured its sustenance, or for nations whose servitude consists in renouncing the use of the things nature has given them or in using these things to engage in a disadvantageous commerce.

[9]This was first established by the Portuguese. François Pyrard, *Voyages*, pt. 2, chap. 15 [vol. 2, pt. 1, chap. 15; 2, 204–205; 1887–1890 edn].

CHAPTER 10

Establishment proper to economic commerce

In states that engage in economic commerce, one has fortunately established banks, which, by means of their credit, have formed new signs of values. But it would be wrong to introduce them into states that carry on a commerce of luxury. To put them into countries governed by one alone is to assume silver on one side and power on the other: that is, on the one side, the faculty of having everything without any power, and, on the other, power with the faculty of having nothing at all. In such a government, there has never been anyone but the prince who has obtained or has been able to obtain a treasury, and wherever there is a treasury, as soon as it is excessive, it immediately becomes the prince's.

For the same reason, trading companies that associate for the sake of a certain commerce are rarely suited to the government by one alone. The nature of these companies is to give to individual wealth the force of public wealth. But in these states this force can be found only in the hands of the prince. I would go further: trading companies do not always suit states where there is economic commerce; and, if the

business is not so large as to be beyond the reach of individuals, it is better not to hamper the liberty of commerce by exclusive privileges.

CHAPTER 11

Continuation of the same subject

In states that engage in economic commerce, one can establish a free[d] port. The economy of the state, which always follows the frugality of individuals, gives its economic commerce a soul, so to speak. What it loses in taxes by the establishment considered here is offset by what it can draw from the republic in wealth made by industriousness. But in monarchical government such establishments would be contrary to reason; their only effect would be to relieve luxury of the weight of imposts. It would deprive itself of the sole good this luxury can procure and of the only bridle that, in such a constitution, it can have.

[d]*franc.*

CHAPTER 12

On the liberty of commerce

Liberty of commerce is not a faculty granted to traders to do what they want; this would instead be the servitude of commerce. That which hampers those who engage in commerce does not, for all that, hamper commerce. It is in countries of liberty that the trader finds innumerable obstacles; the laws never thwart him less than in countries of servitude.

England prohibits the export of its wool; it wants coal brought to the capital by sea; it does not permit the export of horses unless they are gelded; the ships[10] from its colonies that trade in Europe are to anchor in England. It hampers the trader, but it does so in favor of commerce.

[10]Navigation Act of 1660 [*The Statutes of the Realm*, 12 Car., vol. 2, chap. 18; 5, 246–250; 1963 edn; consider the Act of Interregnum, October 9, 1651]. It was only in wartime that those [merchants] of Boston and Philadelphia sent the vessels carrying their goods directly to the Mediterranean.

CHAPTER 13

What destroys that liberty

Where there is commerce there are customs houses. The object of commerce is to export and import commodities in favor of the state, and the object of the customs houses is a certain duty[c] on that same exporting, also in favor of the state. Therefore, the state must be neutral between its customs houses and its commerce and must arrange that these two things never thwart one another; then one enjoys the liberty of commerce there.

The farming of the customs[f] destroys commerce by its injustices and harassments and by the excess of what it imposes, but independently of that it also destroys it further by the difficulties to which it gives rise and the formalities it requires. In England, where customs are imposed directly,[g] there is a singular ease in trade: a word in writing accomplishes the greatest business; the merchant does not have to waste an infinite time and have specified agents in order to conclude all the difficulties brought up by the tax-farmers or to submit to them.

[c] *droit.*
[f] *la finance* here means the work of the *financiers*, tax-farmers, in regard to customs. See note [b], bk. 3.
[g] *régie.* See 13.19 (note [d], bk. 13).

CHAPTER 14

On the laws of commerce that entail the confiscation of commodities

The Magna Carta of England forbids in the event of war the seizure and confiscation of the commodities of foreign traders, except as a reprisal. It is a fine thing for the English nation to have made this one of the articles of its liberty.

In the war Spain waged against the English in 1740, a law was made[11] that punished with death those who introduced English commodities

[11] Published at Cadiz in March 1740. [See Jean Rousset de Missy, *Les Procès entre l'Espagne et Grande-Bretagne*, vol. 13, Supplement of the *Recueil historique*, Declaration of War, November 28, 1739; p. 252; 1756 edn.]

into the Spanish states;[h] it imposed this same penalty on those who carried Spanish commodities to the English states. Such an ordinance can find, I believe, no other model than the laws of Japan. It runs counter to our mores, to the spirit of commerce, and to the harmony that should prevail in proportioning penalties; it confuses all ideas, making a state crime of what is only a violation of the police.

[h] Here *états*, "states," are what we today would call the Spanish colonies.

CHAPTER 15

On corporal constraint

Solon[12] ordered that there would no longer be corporal obligations for civil debts in Athens. He drew this law from Egypt;[13] Bocchoris had made it, and Sesostris had revived it.

This law is good for ordinary civil business,[14] but we are right not to observe it in commercial business. For as traders are obliged to entrust great sums for often quite short periods of time, to give them and take them back again, the debtor must fulfill his engagements at the appointed time; this assumes corporal constraint.

In business deriving from ordinary civil contracts, the law should not provide for corporal constraint because it makes more of the liberty of one citizen than of the convenience of another. But, in agreements that derive from commerce, the law should make more of public convenience than of the liberty of a citizen; this does not prevent the restrictions and limitations that humanity and a good police can require.

[12] Plutarch [*Moralia*], *De vitando aere alieno* [828f].
[13] Diodorus Siculus [*Bibliotheca historica*], bk. 1, pt. 2, chap. 3 [1.79].
[14] Those Greek legislators were blameworthy who had forbidden taking a man's weapons and cart as securities but had permitted taking the man himself. Diodorus Siculus [*Bibliotheca historica*], bk. 1, pt. 2, chap. 3 [1.79.5].

CHAPTER 16

A fine law

The law of Geneva that excludes from magistracies and even from entry to the Great Council the children of those who have lived or who have died insolvent, unless the children discharge their father's debts, is a very good one. It has the effect of building up trust in traders, in magistrates, and in the city itself. Here again, confidence in an individual has the force of public confidence.

CHAPTER 17

A law of Rhodes

The Rhodians went further. Sextus Empiricus[15] says that there a son could not be excused from paying his father's debts by renouncing his inheritance. This law of Rhodes was given to a republic founded on commerce: now, I believe that reasons drawn from commerce itself should have set this limitation, that the debts contracted by the father after his son had begun to carry on the commerce would not affect the goods acquired by the son. A merchant should always know his obligations and conduct himself at every moment in accordance with the state of his fortune.

[15] [Sextus Empiricus, *Pyrrhoeia*] *Hippotiposes*, bk. 1, chap. 14 [1.149].

CHAPTER 18

On judges for commerce

Xenophon, in his book, *Ways and Means*,[i] wanted one to reward those prefects of commerce who dispatched proceedings most quickly. He felt the need for our commercial jurisdiction.[j]

Commercial business is only slightly susceptible to formalities. The

[i] Xenophon, *Ways and Means* 3.3.

[j] *jurisdiction consulaire.*

actions of one day have to be followed the next day by others of the same nature. Therefore, they must be decided every day. It is otherwise in the actions of life that have much influence on the future, but which happen rarely. One usually marries only once; one does not make bequests or testaments every day; one comes of age only once.

Plato[16] says that, in a town where there is no maritime commerce, half the number of civil laws are needed, and this is very true. Commerce brings into a country different sorts of peoples, a great number of agreements, kinds of goods, and ways of acquisition.

Thus, in a commercial town there are fewer judges and more laws.

[16] [Plato] *Laws*, bk. 8 [842c–d].

CHAPTER 19

That the prince should not engage in commerce

Theophilus,[17] on seeing a ship which carried commodities for his wife Theodora, had it burned. "I am the emperor," he told her, "and you make me a shipmaster. How can the poor people earn a living if we too ply their trade?" He could have added: who will restrain us if we make monopolies? Who will require us to fulfill our engagements? The courtiers will want to do our commerce; they will be more avid and more unjust than we. The people have trust in our justice; they have none in our opulence; the many imposts that make their misery[k] are certain proofs of our own.

[17] [Johannes] Zonaras [*Epitome historiarum* 25.25.41–42].

[k] Here *misère* means both "misery" and "poverty".

CHAPTER 20

Continuation of the same subject

When the Portuguese and Castilians dominated the East Indies, commerce had such rich branches that their princes did not fail to seize them. This ruined their establishments in those parts.

The viceroy of Goa granted exclusive privileges to individuals. One has no trust in such people; commerce is interrupted by the perpetual change of those to whom it is entrusted; no one manages this commerce or is concerned that one leaves only ruins to one's heir; the profit stays in the hands of individuals and is not spread out enough.

CHAPTER 21

On commerce by the nobility in a monarchy

It is against the spirit of commerce for the nobility to engage in it in a monarchy. "That would be pernicious for the towns," say the emperors Honorius and Theodosius,[18] "and would take away the ease with which merchants and plebeians buy and sell."

It is against the spirit of monarchy for the nobility to engage in commerce. The usage that permitted commerce to the nobility in England is one of the things that most contributed to weakening monarchical government there.

[18] Law "Nobiliores," *Code* [*Corpus Juris Civilis*, *Code* 4.63.3] *de commerciis et mercatoribus*, and the last law of *de rescindenda venditione* [*Corpus Juris Civilis*, *Code* 4.44].

CHAPTER 22

A particular reflection

People who are struck by what is practiced in some states think there should be laws in France engaging the nobles to carry on commerce. This would be the way to destroy the nobility, without being of any utility to commerce. The practice of this country is very wise; traders are not nobles, but they may become nobles. They can have the expectation of becoming noble without the drawback of being nobles. They have no surer way of quitting their profession than to do it well or to do it successfully: something usually linked to prosperity.

The laws ordering each man to stay in his profession and to pass it down to his children are and can be useful only in despotic states,[19] where none can or should be rivals.

[19] Indeed, they are often established that way.

Let it not be said that each man will follow his profession better when he cannot leave it for another. I say that a profession will be better pursued when those who have excelled in it can expect to attain another.

When nobility can be acquired with silver, it greatly encourages traders to put themselves in a position to attain it. I am not examining whether it is good thus to give the prize of virtue to wealth; there are governments in which this can be quite useful.

In France, that estate of the robe lying between the great nobility and the people, which, without having the brilliance of the former, has all its privileges; that estate which leaves individuals at mid-level while the body, the depository of the laws, is glorified; that estate in which one has no way to distinguish oneself but by prosperity and virtue; an honorable profession, but one which always lets a more distinguished one be seen: that altogether warlike nobility, who think that, whatever degree of wealth one has, one's fortune is yet to be made but that it is shameful to increase one's goods if one does not begin by dissipating them; that part of the nation who always serve with their capital goods; who, when they are ruined, give their place to others who will serve with their capital again; who go to war so that no one will dare to say they did not go; who expect honors when they cannot expect wealth, and when they do not get wealth, console themselves because they have acquired honor: all these things have necessarily contributed to the greatness of the kingdom. And if, over the past two or three centuries, the kingdom has endlessly increased its power, this must be attributed to the goodness of its laws and not to fortune, which does not have this sort of consistency.[l]

[l] *ces sortes de constance.* See note [b], bk. 1.

CHAPTER 23

Those nations for whom it is disadvantageous to engage in commerce

Wealth consists in land or in movable effects; the land of each country is usually possessed by its inhabitants. Most states have laws that discourage foreigners from acquiring their lands; only the presence of

the master can increase their value; therefore, this kind of wealth belongs to each state particularly. But movable effects, such as silver, notes, letters of exchange, shares in companies, ships, and all commodities, belong to the whole world, which, in this regard comprises but a single state of which all societies are members; the people that possess the most of such movable effects in the universe are the richest. Some states have an immense number of them; they acquire them by their produce, by the labor of their workers, by their industry, by their discoveries, even by chance. The avarice of nations disputes the movables of the whole universe. There may be a state so unhappy that it will be deprived of the movable effects of other countries and also even of almost all its own; the owners of its land will be but the colonists of foreigners. This state will lack everything and will be able to acquire nothing; it would be far better for it to have commerce with no nation in the world; in these circumstances commerce has led to poverty.

A country which always sends out fewer commodities or less produce than it receives puts itself in equilibrium by impoverishing itself; it will receive ever less, until, in extreme poverty, it receives nothing.

In commercial countries, silver that has suddenly vanished comes back because the states that received it owe it; in the states of which we speak, silver never comes back because those who have taken it owe nothing.

Poland will serve here as our example. It has almost none of the things we call the movable effects of the universe except the grain of its fields. A few lords possess whole provinces; they oppress the plowman in order to have a greater quantity of grain to send to foreigners and procure for themselves the things their luxury demands. If Poland had commerce with no nation, its people would be happier. Its important men, who would have only their grain, would give it to their peasants for them to live on; excessively large domains would be burdensome to them, they would divide them among their peasants; as everyone would have skins or wools from his herds, there would no longer be an immense expense in making clothing; the important men, who always love luxury and who would be able to find it only in their own country, would encourage the poor in their work. I say that this nation would flourish more, unless it became barbarous; something that the laws could prevent.

Now let us consider Japan. The excessive quantity of what it can

accept produces the excess of what it can send out: things will be in equilibrium as if imports and exports were moderate, and besides, this kind of inflation[m] will produce a thousand advantages for the state; there will be more consumption, more things on which the arts can be exercised, more men employed, more means of acquiring power. In cases in which one needs prompt aid, a state that is so filled can give it more quickly than another. It is hard when a country does not have superfluous things, but it is the nature of commerce to make superfluous things useful and useful ones necessary. Therefore, the state will be able to give the necessary things to a greater number of its subjects.

Let us say, therefore, that it is not the nations who need nothing that lose by carrying on commerce; it is those who need everything. It is not the peoples who have enough among themselves but those who have nothing at home who find it advantageous to trade with no one.

[m] *enflure*, "inflation," means blown up like a balloon.